

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SANDHILLS GLOBAL, INC.,

Plaintiff,

-vs-

LAWRENCE GARAFOLA SR., and
FACTS TECHNOLOGY LLC

Defendants.

CIVIL ACTION NUMBER:

3:19-cv-20669-MAS-TJB

Preliminary Injunction
Hearing

Clarkson S. Fisher United States Courthouse
402 East State Street
Trenton, New Jersey 08608
February 6, 2020

B E F O R E:

HONORABLE MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

BRESSLER, AMERY & ROSS, P.C.
BY: JOHN D. MILLER, III, ESQUIRE
On behalf of the Plaintiff.

TRINITY & FARSIUO
BY: STEVEN D. FARSIUO, ESQUIRE
On behalf of the Defendants.

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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WITNESS

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DIRECT EXAMINATION BY MR. MILLER

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NUMBER

IDEN.

Plaintiff's Exhibit P-1 through P-24 for
identification.

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Defendant's Exhibit D-1 through D-4 for
identification.

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1 (PROCEEDINGS held in open court before The Honorable
2 Michael A. Shipp, United States District Judge, at 10:12 a.m.)

3 THE COURT: Please be seated. Good morning.

4 MR. MILLER: Good morning, your Honor.

5 MR. FARSIUO: Good morning, Judge.

6 THE COURT: We're here and we're on the record in the
7 matter of Sandhills Global v. Garafola, Docket
8 Number 19-20669.

9 May I have appearances of counsel, please.

10 MR. MILLER: For the plaintiff, John Miller from
11 Bressler Amery & Ross. And with me is representatives from
12 Sandhills, Evan Welch and Alexander Essay, in-house counsel.

13 THE COURT: Good morning.

14 MR. FARSIUO: Good morning, Judge. Steve Farsiou for
15 the law firm of Trinity & Farsiou on behalf of the defendants.
16 And I have Mr. Garafola sitting to my left.

17 THE COURT: Okay. And good morning to you as well.

18 Okay. This matter comes before the Court upon the
19 plaintiff Sandhills Global's motion for a preliminary
20 injunction against defendants Larry Garafola and Facts
21 Technology LLC. Defendants filed opposition, plaintiffs filed
22 a reply.

23 And by way of background, on December 16, 2019, the
24 Court issued a TRO against Garafola alone on plaintiff's
25 contract claim, which remains in effect pending a preliminary

1 injunction hearing.

2 On December 23, 2019, plaintiff informed the Court
3 that Garafola violated the TRO by continuing to solicit
4 plaintiff's customers and requested that the Court amend the
5 TRO to enjoin Facts Technology. The Court denied plaintiff's
6 request for an amendment to the TRO and for attorney's fees.

7 On January 22, 2020, plaintiff again informed the
8 Court that Mr. Garafola violated the TRO and requested the
9 Court to amend the TRO to restrain Facts Technology and for
10 attorney's fees and costs.

11 Having reviewed the parties' submissions and having
12 held a pre-hearing conference on January 22, 2020, the Court
13 is now prepared today to proceed with the preliminary
14 injunction hearing. And in that connection, I remind the
15 parties that we're going to proceed.

16 Although officially and on the record, the rules of
17 evidence are relaxed in a preliminary injunction hearing. So
18 to the extent that there are any objections, you can certainly
19 make them, but again, it's for the Court's benefit to assist
20 the Court in making the ultimate determinations.

21 So you can reserve such and put such in writing, if
22 you need to do that, post. We're also going to have some post
23 briefing after the hearing. So there are certain conclusions
24 of law and findings of fact that you'll have to set forth
25 after the conclusion of the hearing.

1 So, with that, I do want to proceed in a somewhat
2 informal manner, and if there are other issues that need to be
3 brought to the Court's attention, certainly you can bring them
4 to the Court's attention.

5 And notwithstanding the fact that I do have some of
6 my interns sitting in the jury box, there is no jury trial.
7 There is no need for any theatrics, no need for anything that
8 is for your client's consumption. I want to be able to make
9 these determinations, so help me to help you.

10 With that, I'm turning it over to the plaintiff.

11 Mr. Miller, it's your case.

12 MR. MILLER: Judge, thank you very much. Very
13 quickly, as a housekeeping matter, while I think there's a
14 contested issue about the intellectual property that we're
15 going to be discussing, I thank your Honor for entering the
16 confidentiality agreement in an order this morning.

17 For purposes of the preliminary injunction hearing,
18 the documents that I'm going to offer the Court for its
19 edification contain some of the confidential intellectual
20 property.

21 And my request is that, at least for this part, that
22 those documents not be made public until we otherwise have the
23 full record in there. Because if, ultimately, they're made
24 public, then my client, Sandhills, loses that confidential
25 intellectual property.

1 So my request is if those can be remained under seal
2 until the preliminary injunction hearing is concluded.

3 THE COURT: Any opposition, Mr. Farsiou?

4 MR. FARSIYOU: No, Judge. And, Judge, do we need to
5 put anything on the record about what we discussed with
6 respect to the documents?

7 THE COURT: If you want to put them on the record,
8 you can put them on the record.

9 MR. FARSIYOU: Okay.

10 THE COURT: And, Counsel, your request is granted.
11 We will keep these documents confidential until such time
12 that, you know, you file whatever you need to file, in
13 accordance with the rules, regarding the sealing of the
14 records, the sealing of any document production.

15 MR. MILLER: Thank you, your Honor.

16 THE COURT: Okay.

17 Mr. Farsiou?

18 MR. FARSIYOU: So, Judge, just so the record is clear,
19 as I advised your Honor in chambers, at approximately
20 6:29 p.m. last night I received an email from Mr. Miller.
21 Contained 596 documents, the majority of which I had never
22 seen before but had requested previously. And I had indicated
23 to your Honor that I felt that those documents should not be
24 introduced and should not be permitted.

25 Your Honor indicated that the opportunity to review

1 those documents and reserve any cross-examination with respect
2 to Mr. Welch will be given, so I thank your Honor for that
3 courtesy.

4 But, at the same time, I just want to note that the
5 documents that were provided last night were the same
6 documents that were the subject in the initiation of the first
7 Sandhills case. Those documents had been requested in that
8 case and a confidentiality order was entered. Those documents
9 were never produced.

10 We came here on December 11th of 2019 for the TRO
11 hearing, and Mr. Miller stood up and indicated that he had all
12 this evidence about what my client had apparently done
13 improperly.

14 I said that that's news to me, I had never seen the
15 documents, we requested them previously, we never had them.
16 Those documents -- I'm assuming there's no other ones -- the
17 documents that we received last night at 6:29, the 596 pages
18 of documents are those documents that I had been requesting
19 for months.

20 So obviously, you know, your Honor made a ruling with
21 respect to how we're going to proceed, and we're obviously
22 going to abide by that. I just wanted the record to be clear
23 as to what actually happened so that, you know, my client
24 understands what's going to happen here today and that I'm
25 going to be able to reserve my right to cross-examine

1 Mr. Welch based upon our discussion.

2 THE COURT: Okay.

3 Mr. Miller.

4 I'm sorry.

5 MR. FARSIUO: One other thing, Judge. I did indicate
6 previously that -- and I don't think it's going to be an issue
7 today. But to the extent that Mr. Miller is going to submit
8 to your Honor certifications from people who are not here
9 today, I understand the rules of evidence are relaxed, I just
10 want to note my objection that I believe that the witnesses
11 should be required to get on the stand and be cross-examined
12 as to how those certifications came about. I think that's
13 very important here. So I just want to note that.

14 I do have, as your Honor knows, I have a
15 certification from Mr. Dyess from Permian. I had indicated
16 Mr. Permian (sic) is in Texas and he's not available today,
17 because we talked about not having him.

18 But if the next date comes and you want to hear from
19 Mr. Dyess, I would request that Mr. Dyess be permitted to
20 either testify via FaceTime or some other -- some type of, I
21 guess, social media device that he can testify so that you can
22 actually see him and he can be cross-examined. I think that's
23 the only fair way to proceed here. So I just wanted to note
24 that for the record.

25 THE COURT: Okay.

1 Mr. Miller.

2 MR. MILLER: Very briefly, your Honor.

3 The majority of the documents that are at issue
4 Mr. Farsiou just made clear. As I explained to your Honor,
5 those are emails or attachments to emails that were sent to
6 Mr. Farsiou -- Garafola's personal email account, the
7 Gmail account. I just wanted the other side of that equation
8 to be there.

9 And relative to the certification, your Honor has
10 repeatedly said that this is to aid the Court. And
11 ultimately, I believe, the use of or reliance on the
12 certifications that have already been submitted to your Honor
13 in connection with the application do aid the Court such that
14 if, ultimately, we can present them through Mr. Welch because
15 he otherwise talked or spoke to the clients or
16 representatives, we'd offer them, and we believe that your
17 Honor can actually consider them without calling those
18 witnesses in. But we'll address that when we get there.

19 THE COURT: Thank you.

20 Counsel has raised this issue with the Court, and the
21 Court has resolved the dispute by way of simply curing the
22 unfairness.

23 The Court notes that I'm never appreciative of an
24 adversary receiving documents the night before any kind of
25 trial or proceeding. And to that end and in that connection,

1 I'm going to allow Mr. Farsiou an opportunity to review the
2 documents that he just received as well as have the benefit of
3 the transcript of Mr. Welch's testimony, and then we will have
4 a subsequent hearing, at which time Mr. Farsiou will have an
5 opportunity to cross-examine Mr. Welch with regards to the
6 documents.

7 We are going to proceed in all other aspects today
8 with other remaining claims and other issues that certainly
9 can be put before the Court so as not to waste the time that
10 folks have traveled to get here and waste the time that the
11 Court has set aside to hear this matter. So we're going to
12 proceed in that fashion.

13 And to the extent that there are certifications that
14 come in, Counsel can make the appropriate request for relief
15 at that time. We'll look at each certification on a
16 case-by-case basis, and we'll take the testimony as it comes
17 in. Okay?

18 With that, those are all the preliminary matters that
19 I understand that there are, so I'd like to go ahead get
20 started.

21 Counsel, anything further?

22 MR. MILLER: Nothing from plaintiff.

23 MR. FARSIUO: No, Judge.

24 THE COURT: Okay.

25 Mr. Miller.

1 MR. MILLER: Your Honor, I'd like to call Evan Welch
2 to the stand.

3 THE COURT: Mr. Welch.

4 EVAN WELCH, PLAINTIFF'S WITNESS, SWORN.

5 THE DEPUTY COURT CLERK: Please state your name for
6 the record and spell your last name.

7 THE WITNESS: W-E-L-C-H.

8 THE COURT: Mr. Welch, you can be seated. And I'm
9 just going to give you just a few ground rules just so that we
10 keep the record clean.

11 There is a court reporter sitting directly in front
12 of you. She's taking down every word that's spoken here.
13 It's really important that she's able hear you, so I'm going
14 to ask you to keep your voice up; and also that she's able to
15 take down an accurate record, so you can't give a nonverbal
16 response like a nod of the head or a shrug of the shoulders.
17 You have to give a verbal response so she can take it down.

18 Secondly, she can't take down two people speaking at
19 the same time, so please wait until the attorney fully poses
20 the question before you begin to answer. If not, she'll have
21 people speaking on top of one another and we'll have an
22 inaccurate record. Okay?

23 If there is an objection at any time, which there
24 should not be, please stop speaking and let the Court resolve
25 the objection.

—WELCH - DIRECT - MILLER—

1 If counsel needs to be heard at sidebar at any time,
2 certainly, we can have a sidebar. Okay? Other than that, I'd
3 like to try and get as much of the testimony in today as we
4 can possibly get covered today.

5 With that, do you have any questions before we begin?

6 THE WITNESS: No.

7 THE COURT: Okay. Mr. Miller, your witness.

8 MR. MILLER: Thank you, your Honor.

9 (DIRECT EXAMINATION BY MR. MILLER:)

10 Q. Good morning, Mr. Welch. How are you?

11 A. Good.

12 Q. You traveled from Nebraska to New Jersey for this
13 hearing, correct?

14 A. Yes.

15 Q. Well, I appreciate you making the effort.

16 Mr. Welch, by whom are you currently employed?

17 A. Sandhills Global, Inc.

18 Q. And what's your current position?

19 A. Director of new product sales.

20 Q. With respect to your employment with Sandhills, how long
21 have you been an employee?

22 A. 15 years.

23 Q. And in your role as the director of new products sales,
24 how long have you been in that role?

25 A. A little over three years.

—WELCH - DIRECT - MILLER—

1 Q. For the Court's benefit, can you give a description of
2 your job responsibilities in that role?

3 A. Sure. I deal with the newer products in Sandhills
4 Global, Inc.'s brands. Some of those include products that
5 are regarding the auction -- the online auction business.

6 I oversee a sales staff of about 22 sales
7 representatives, so I deal with the customers through those
8 sales representatives and three managers that oversee those
9 sales representatives.

10 And as well is I'm also involved in the acquisition of
11 new businesses that Sandhills is acquiring.

12 Q. Now, Mr. Welch, in terms of Sandhills in the area that
13 you're otherwise employed, and that is as the director of new
14 product sales, can you describe how Sandhills otherwise
15 operates in that space you're employed in?

16 A. Yes. So we've got three different divisions within that
17 auction group. Okay. So those sales representatives, they
18 work with several different products that are sold to auction
19 companies, primarily. There's the AuctionTime, which is our
20 timed auction product, "timed auction" meaning online only.
21 There's no live aspect to it whatsoever.

22 Then we've got the product which we acquired from
23 Mr. Garafola, Equipmentfacts, which is our -- what we call our
24 simulcast auction product, meaning that there is an online
25 bidding component that runs alongside a live auction with a

—WELCH - DIRECT - MILLER—

1 live audience.

2 And then we've got another product called HiBid. That's
3 kind of a hybrid of those two but for non-equipment-related
4 items.

5 Q. Now, relative to the online auction component, be it the
6 timed auction or the simulcast, can you describe for the Court
7 how it is that you actually conduct that type of business?

8 A. Yes. So the timed auction component, AuctionTime, it's
9 strictly the bids are being taken by the computer. So there's
10 bidders from all over the world that are bidding on items that
11 can be spread out all over the world.

12 Equipmentfacts, on the other hand, is in conjunction with
13 a live auction. So if there's a live auction in New Jersey,
14 there's a hundred people there in the audience that can be
15 bidding on items that are offered up in that auction,
16 Equipmentfacts is the online access for that auction.

17 So Equipmentfacts is sitting there next to the
18 auctioneer, and they're running the bid, the bidding online,
19 and people are bidding from all over the world online on that
20 sale that is taking place in New Jersey.

21 Q. Mr. Welch, you've described AuctionTime, HiBid, and
22 Equipmentfacts. Does Sandhills describe those types of
23 functions where those kind of industries in a particular word
24 or a description?

25 A. Industry-specific brands.

—WELCH - DIRECT - MILLER—

1 Q. Brands?

2 A. Yes.

3 Q. So, visually, take the Court to, if you were to go to the
4 Sandhills website --

5 A. Yes.

6 Q. -- describe what you would see in terms of the brands you
7 just described.

8 A. You would see a list of all Sandhills Global, Inc.'s
9 brands, which include AuctionTime, Equipmentfacts, HiBid,
10 along with many others.

11 Q. And the many others, are those others areas in which
12 there's a -- Sandhills is providing, at least through
13 Equipmentfacts, online auction services to different types of
14 brands?

15 A. Yes.

16 Q. Prior to the purchase of Equipmentfacts, did Sandhills
17 consider Equipmentfacts a competitor to Sandhills?

18 A. Yes.

19 Q. And what brand was it a competitor of?

20 A. We had a brand called BidCaller that was kind of in its
21 infancy. It was a simulcast auction service. It was pretty
22 strong in the farm equipment industry whereas Equipmentfacts
23 was very strong in the construction and truck equipment
24 industry. So that's why we thought it might be good fit.

25 Q. And by saying it might be a good fit, is that why you

—WELCH - DIRECT - MILLER—

1 targeted the acquisition of Equipmentfacts?

2 A. Yes. Equipmentfacts, and particularly Mr. Garafola, were
3 kind of pioneers of the industry. They were one of the first
4 online providers of simulcast solutions. So we thought not
5 only of the Equipmentfacts brand but also the knowledge that
6 we would get by acquiring the business would be worthwhile.

7 Q. And the knowledge, would that include the customer
8 relationships?

9 A. Customer relationships, both buyer and seller; the
10 intellectual property, which would include the website, all
11 the trademarks, all the copyright, like all -- all the
12 intellectual property that came with it.

13 Q. Now, you've described your experience, or at least
14 knowledge, of Mr. Garafola being a pioneer in the online
15 auction space. Other than sort of knowing that, did you have
16 any experience with him prior to the acquisition?

17 A. Knew who he was. I don't know that I'd ever met him in
18 person before. I'd seen him at some conventions and trade
19 shows and whatnot, but that was about the extent.

20 Q. And you've testified, as part of your job
21 responsibilities at Sandhills, that you were involved with
22 business acquisitions, correct?

23 A. Yes, correct.

24 Q. Did you have involvement in the acquisition of
25 Equipmentfacts?

—WELCH - DIRECT - MILLER—

1 A. Yes. I was the direct point of contact.

2 Q. So you were the person negotiating, at least as the face
3 on behalf of Sandhills, for purposes of that acquisition?

4 A. Yes.

5 Q. Who was on the other side of that table? Was
6 Mr. Garafola involved?

7 A. Yes. Mr. Garafola was my point of contact.

8 Q. Did he have any other representatives helping him out
9 through the acquisition?

10 A. Yes. He had an attorney. I think her name was Lynn
11 McDougall.

12 Q. Now, were there negotiations involved with respect to the
13 acquisition?

14 A. Yes.

15 Q. And how long were those negotiations, generally speaking?

16 A. Our first in-person meeting was July of 2017, which we
17 started negotiations at that time, which they started to pick
18 up significantly in the turn of 2018. And then, ultimately,
19 we came to a verbal agreement, which ended up consummating to
20 an LOI and ultimately led to the purchase agreement.

21 Q. For the clarification for the Court's benefit, "LOI"
22 standing for what?

23 A. Letter of intent.

24 Q. Thank you. And is that where the acquisition stopped or
25 there's another additional steps that took place?

—WELCH - DIRECT - MILLER—

1 A. No. There was a letter of intent in April, and then from
2 the time -- from April until we ultimately closed in July of
3 2018, there was due diligence being performed.

4 Q. Now, did Sandhills make an initial opening offer in terms
5 of a price ^ Equipmentfacts?

6 A. Yes.

7 Q. And what was that offer?

8 A. The initial verbal offer was 1.23 million.

9 Q. And going forward, you described the letter of intent,
10 that was actually memorialized in a writing?

11 A. Yes.

12 Q. And did you have involvement in the creation, or at least
13 the content, of that letter of intent?

14 A. Yes.

15 MR. MILLER: Judge, may I approach the witness? I'd
16 like to offer him. And, your Honor, for presentation
17 purposes, I have hard copies for you. I can put it up there
18 or whatever your Honor would like best.

19 Q. Mr. Welch, please take a minute and review that document
20 and let me know when you've sufficiently reviewed to be able
21 to testify about it.

22 A. Okay.

23 Q. Is that the letter of intent you testified about earlier?

24 A. Yes.

25 Q. And if you'll flip to the last page, is there a signature

—WELCH - DIRECT - MILLER—

1 there?

2 A. Yes.

3 Q. There's -- one of them -- is Mr. Garafola's signature
4 there?

5 A. Yes, correct.

6 Q. And there's another signature. Do you see it?

7 A. Yes.

8 Q. And who is that from?

9 A. Shawn Peed.

10 Q. If you were the lead on the negotiations, why didn't you
11 sign?

12 A. Shawn Peed is the owner of the company.

13 Q. And it's his practice, when there's an acquisition, he's
14 the signatory?

15 A. Yes.

16 Q. Going back to the first page, if you will.

17 And for purposes of the record, it's Bates stamped --
18 this document is Bates-stamped Sandhills PI-508 through -515.

19 If you look at paragraph 1 -- I don't want you to read
20 it. Review it very briefly for yourself because it's actually
21 pretty long.

22 My question to you after you reviewed it is, what is that
23 paragraph reflecting in terms of what's contemplated?

24 A. A transaction between Sandhills Publishing and
25 Equipmentfacts, a purchase agreement.

—WELCH - DIRECT - MILLER—

1 Q. So I'm actually looking paragraph Number 1. It's towards
2 the bottom?

3 A. Oh, okay. I didn't see that. Sorry.

4 Q. Sorry. And for the Court's benefit, what's the title
5 next to Number 1?

6 A. "Included Assets."

7 Q. Okay. Take a minute, just take a real quick look, and
8 let me know when you're done.

9 A. It's what's included in the purchase price.

10 Q. And did those items that appear in Number 1 generally
11 carry over to the actual Asset Purchase Agreement?

12 A. Yes.

13 Q. And, if you would, going to numbered paragraph 4, which
14 is on the page Bates-stamped 510. It's at the bottom right.

15 Are you there?

16 A. Yes.

17 Q. And that paragraph is purchase price, correct?

18 A. Correct.

19 Q. And what's the price there?

20 A. 1.5 million.

21 Q. You earlier testified that Sandhills made an opening bid
22 of 1.23 million?

23 A. Yes, correct.

24 Q. So, obviously, that's an increase, correct?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. Did Mr. Garafola negotiate that increase?

2 A. Yes.

3 Q. If you go to paragraph -- numbered paragraph number 7.

4 Let me know when you're there. And that's on Bates stamp 512.

5 Are you there?

6 A. Yes.

7 Q. Can you read for the Court the title of that paragraph?

8 A. Non-competition, Non-Interference, and Confidentiality

9 Agreement.

10 Q. And, just generally speaking, take a minute to look at

11 it, what does that paragraph convey?

12 A. That as a part of the purchase agreement, a 5-year

13 non-competition, non-interference, and confidentiality

14 agreement will be signed by the seller.

15 Q. And that seller being Mr. Garafola?

16 A. Yes, correct.

17 Q. And did, in fact, the documents that are referenced

18 there, those agreements, become part of the Asset Purchase

19 Agreement?

20 A. Yes.

21 Q. And again, this is in April of 2018?

22 A. Correct.

23 Q. And the Asset Purchase Agreement, as you testified,

24 actually occurred a couple months later, in July of 2018?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. You testified earlier about an individual that was
2 assisting Mr. Garafola, a Lynn McDougall?

3 A. Yes.

4 Q. To your knowledge, was Ms. McDougall -- and she's an
5 attorney, correct?

6 A. Yes, correct.

7 Q. To your knowledge, was she involved in the negotiations
8 of the letter of intent?

9 A. Yes.

10 Q. And again, Mr. Garafola signed it. And you don't see any
11 notations that he objected to any of the terms, correct?

12 A. No.

13 Q. Now, you testified earlier in terms of why you were
14 targeting Equipmentfacts, and you said that it had a stronger
15 or a really strong place in the online auction for agriculture
16 and construction, correct?

17 A. Construction and truck.

18 Q. I'm sorry. Construction and truck.

19 A. And agricultural as well, but, yes.

20 Q. And that's what made it attractive for the purchase?

21 A. Yes.

22 Q. You touched on, but I'd like you to give a little more
23 detail. In addition to that, the actual market share,
24 Mr. Garafola, as a potential employee, was attractive to
25 Equipmentfacts and Sandhills as well, correct?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. And can you describe for the Court, in your opinion,
3 having dealt with Mr. Garafola, particularly with the
4 negotiations, what about Mr. Garafola was attractive to bring
5 in as employee?

6 A. He was very knowledgeable in the industry, had extensive
7 experience with regards to clerking, which, when I say
8 "clerking," I mean running of the online bidding alongside a
9 live auctioneer. So that experience, we knew, could kind of
10 fast-track us ahead of where we were at that time.

11 He was a good businessman, had built a nice business over
12 the course of working with Equipmentfacts.

13 Q. And would it be fair to say that you were looking to, as
14 an employee of Sandhills, leverage Mr. Garafola's experience
15 in potential other areas within Sandhills?

16 A. Yes.

17 Q. Did, in fact, was Mr. Garafola limited to working just
18 for Equipmentfacts?

19 A. No.

20 Q. And did, in fact, Mr. Garafola provide services to other
21 brands for Sandhills?

22 A. Yes.

23 Q. Can you give an example or examples?

24 A. Yeah. I can give several with his relationships in place
25 with several of our auctioneers. He actually brought Ryan

—WELCH - DIRECT - MILLER—

1 Auctions into Sandhills to meet and, ultimately, we got them
2 to use AuctionTime, our timed auctions product.

3 He had a previous relationship with a company called
4 Vicari Auctions and was instrumental in creating a classic car
5 industry-specific portal, where we ran one of those auctions
6 on that platform. That's just a couple of examples.

7 Q. Great. Thank you. Earlier, you were testifying about
8 your involvement in the negotiations.

9 Were you actually involved in the actual execution of the
10 Asset Purchase Agreement, which I've referred to as the APA?

11 A. Yes.

12 Q. And you understood the terms that were being included in
13 that Asset Purchase Agreement?

14 A. Yes.

15 MR. MILLER: Judge, I'd like to approach the witness
16 to give him an exhibit, please.

17 THE COURT: Sure.

18 BY MR. MILLER:

19 Q. Mr. Welch, I'm not going to belabor you to go through
20 this whole document, but what I'd like you to do, if you
21 could, generally review the document and, in particular,
22 looking at the last pages. And when you're there, let me know
23 that you've completed that review, and I have a couple of
24 questions.

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. Mr. Welch, is that the Asset Purchase Agreement about
2 which you testified and had involvement in the negotiations?

3 A. Yes.

4 Q. And what I'm going to ask you to do, and this becomes
5 almost a Jenga of exhibits, this document, I'm going to have
6 you, once you're done reviewing it, set it to the side because
7 we're going to refer to it later.

8 A. Okay.

9 Q. But for purposes of right now, on the first page, that
10 is, actually numbered page 2, Bates stamp Sandhills PI
11 Number 2, the first whereas clause, do you see that?

12 A. Yes.

13 Q. And it ends with, in a parenthetical, "business"?

14 A. Yes.

15 Q. You there?

16 A. Uh-huh.

17 Q. For your understanding, having been involved in the APA,
18 what's that paragraph doing? What's the import of that
19 paragraph?

20 A. It's summarizing what the business is.

21 Q. And from your involvement in the negotiations and
22 ultimate acquisition, generally speaking, what is your
23 understanding of what the business was or is, according to
24 this document?

25 A. Online bidding systems, virtual attendance as well as

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1 timed auctions, for the heavy equipment, truck, agriculture
2 and related auction industries.

3 Q. And now, if you'll turn to page 25, Bates stamp Sandhills
4 PI-25. Let me know when you're there.

5 A. Yes, I'm there.

6 Q. Now, just for point of reference, if you go one page
7 before, that is, page 24, it's paragraph 6.6, "Notices." Do
8 you see that?

9 A. Yes.

10 Q. And is it accurate that this paragraph is providing the
11 information, contact information, to the extent notices had to
12 be given to the parties?

13 A. Yes, correct.

14 Q. And if you turn to page 25. Let me know, are you there?

15 A. I'm there.

16 Q. Lynn McDougall, the attorney, is her name referenced
17 here?

18 A. Yes.

19 Q. And is Mr. Garafola's name referenced there?

20 A. Yes.

21 Q. Is there an email address for him?

22 A. Yes.

23 Q. And is it garafola.lawrence@gmail.com?

24 A. Yes, that's correct.

25 Q. And that was known to you as part of -- as early as July

—WELCH - DIRECT - MILLER—

1 16, 2018, that that was Mr. Garafola's personal email address?

2 A. Yes.

3 Q. And just that last page, again, Mr. Garafola has signed?

4 A. Yes.

5 Q. Mr. Peed has signed on behalf of Sandhills?

6 A. Yes, correct.

7 Q. And in your review of the document, were there any
8 notations on the document from Mr. Garafola or his attorney
9 challenging the terms of this Asset Purchase Agreement?

10 A. No.

11 Q. Mr. Welch, you testified earlier in the letter of intent
12 there was a paragraph that talked about non-compete,
13 non-interference, and non-solicitation agreements, correct?

14 A. Yes.

15 Q. In addition to the APA that Mr. Garafola executed, did he
16 also execute those same -- or those other documents?

17 A. Yes.

18 Q. And was one of them a non-compete, non-interference, and
19 confidentiality agreement?

20 A. Yes.

21 MR. MILLER: Judge, may I approach the witness?

22 THE COURT: Sure.

23 BY MR. MILLER:

24 Q. Mr. Welch, please take a moment, just peruse that
25 agreement, in particular the signature page, and let me know

—WELCH - DIRECT - MILLER—

1 when you're done.

2 A. I'm done.

3 Q. Is that document -- actually, what's the title of that
4 document for the record?

5 A. "Non-competition, Non-Interference, and Confidentiality
6 Agreement."

7 Q. And if you look at that, the first "whereas paragraph,"
8 this document was being executed in conjunction with the Asset
9 Purchase Agreement, correct?

10 A. Yes.

11 Q. Without this document having been executed, would the
12 asset purchase have gone through?

13 A. No.

14 Q. Now, staying on the first page, which is Bates stamp
15 Sandhills PI-33, do you see a paragraph 1, "Definitions"?

16 A. Yes.

17 Q. And you see the restrictive period?

18 A. Yes.

19 Q. What's your understanding of the restrictive period
20 that's as part of this agreement?

21 A. That it's 5 years from the date of the signature.

22 Q. And you're a math guy. I'm not. When would the 5 years
23 expire?

24 A. July of 2023.

25 Q. And then do you see a section C, "Territory"?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. And what's the territory?

3 A. The United States.

4 Q. Does Sandhills conduct business throughout the United
5 States?

6 A. Yes.

7 Q. In particular, the online auction industry in which you
8 operate?

9 A. Yes.

10 Q. If you would, go to page 2, Bates stamp Sandhills PI-34.
11 You see a paragraph 2 there?

12 A. Yes.

13 Q. And what's that paragraph?

14 A. Non-competition.

15 Q. And without going through it in entirety, what's your
16 understanding of what that non-competition paragraph is
17 providing?

18 A. That Larry cannot compete with the business that was
19 being sold to Sandhills.

20 Q. Now, so pulling out from the terms of it your
21 understanding, the person who actually operates within the
22 online auction space at Sandhills, what was it preventing
23 Mr. Garafola from doing in terms of the non-compete?

24 A. Selling online auction services to Sandhills' customers
25 and its affiliates.

—WELCH - DIRECT - MILLER—

1 Q. By "affiliates," what do you mean by that?

2 A. Additional brands.

3 Q. And we'll get to a presentation with the brands, but
4 Sandhills has multiple brands, correct?

5 A. Yes, correct.

6 Q. And do those brands rely on the online auction services
7 provided by Equipmentfacts?

8 A. Yes.

9 Q. So ultimately, if I've heard you correctly, Mr. Garafola
10 is not to provide online auction solutions or services in the
11 industries in which Sandhills operates.

12 A. Yes, correct.

13 Q. If you go to paragraph 3, what's that paragraph?

14 A. Non-solicitation of business.

15 Q. And what's your understanding of that paragraph?

16 A. That Mr. Garafola would not solicit customers of
17 Sandhills, whether it be directly or indirectly.

18 Q. And going to paragraph 5, what's the paragraph entitled?

19 A. "Non-interference."

20 Q. And I want to focus on two of the subparagraphs, in
21 particular A and C. Let's start with A.

22 What's your understanding of the non-interference clause?

23 A. That he would not encourage in any way, for any reason,
24 to alter the relationship that Sandhills has with any of its
25 customers.

—WELCH - DIRECT - MILLER—

1 Q. Or the customers of its affiliates?

2 A. Yes, correct.

3 Q. In paragraph C, what's your understanding of what that
4 paragraph provides?

5 A. That he wouldn't aid in taking the customers of Sandhills
6 and its affiliates, whether it be in -- directly or
7 indirectly.

8 Q. And then finally, Mr. Welch -- not finally -- on this
9 page, finally, paragraph 6, "Intellectual Property." Take a
10 minute to review that short paragraph. It goes from Bates
11 stamp Sandhills PI-34 to -35.

12 When you're done, what is it you understand that
13 paragraph to provide?

14 MR. FARSIUO: I'm sorry. What paragraph did you say?

15 MR. MILLER: Paragraph 6.

16 THE WITNESS: That Mr. Garafola cannot appropriate or
17 interfere with the intellectual property of Sandhills and its
18 affiliates.

19 BY MR. MILLER:

20 Q. And is there a time frame in which he's not permitted to
21 do so?

22 A. At any time during or after this restrictive period, the
23 5 years.

24 Q. So, ultimately, it's from when it's executed to 2023?

25 A. Yes, correct.

—WELCH - DIRECT - MILLER—

1 Q. Paragraph 8 on page number 3, what's that paragraph
2 entitled?

3 A. "Enforcement."

4 Q. Now, I know it's a long paragraph. I'm not looking for
5 you to read the whole thing. I'd like to focus you on a
6 specific section. If you would, it's one, two, three, four,
7 five -- six lines down, the sentence that begins "seller's
8 sole member."

9 Let me know when you're there, "the seller's sole member
10 also acknowledges."

11 A. I'm there.

12 Q. Read from that point -- it's actually quite a long
13 sentence. Read that sentence to yourself. I think it's a
14 total of about ten lines. When you're done reading it, let me
15 know.

16 A. Okay.

17 Q. What's your understanding of what this enforcement
18 section is providing in the agreement?

19 A. That Mr. Garafola understands that and acknowledges that
20 any breach of this would result in irreparable harm and damage
21 to Sandhills, the purchaser.

22 Q. And then continue from that and go down a little further.
23 Does it provide anything in addition to what you've just
24 described?

25 A. That the seller would remedy at -- what does that say?

—WELCH - DIRECT - MILLER—

1 The seller would remedy the situation brought on by the
2 breach.

3 Q. And is there a reference to an injunction there?

4 A. Yes.

5 Q. And for clarity -- and for clarity of the record, can you
6 read the section?

7 A. "The purchaser will be entitled to an injunction or other
8 similar relief to prevent any breach of this agreement and to
9 enforce specifically the provisions of this agreement, in
10 addition to money damages sustained by purchaser resulting
11 from the seller's sole member's breach or threatened breach of
12 this agreement."

13 Q. Mr. Welch, if you go to the last page of this document,
14 is Mr. Garafola's signature there?

15 A. Yes.

16 Q. And then, actually, going backwards into page number 4,
17 "Notice Provision," paragraph 11.

18 Do you see the contact information on that page?

19 A. Yes.

20 Q. Do you see Mr. Garafola's contact information there?

21 A. Yes.

22 Q. Does it also contain his personal Gmail account?

23 A. Yes.

24 Q. So you're familiar with Mr. Garafola's personal Gmail
25 account?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Again, this document, is there any notation anywhere on
3 it, other than the signature, reflecting that Mr. Garafola was
4 not agreeing to its provisions?

5 A. No.

6 Q. So, ultimately, he signed and agreed to it?

7 A. Yes.

8 Q. And again, if he didn't sign this non-competition,
9 non-interference, and confidentiality agreement, would the
10 sale have gone through?

11 A. Absolutely not.

12 Q. We have been talking about what Sandhills got for its
13 purchase. We got the assets, we got everything,
14 Equipmentfacts' copyrights, customers list. What did
15 Mr. Garafola get?

16 A. \$1.5 million.

17 Q. And, in addition to that, did he get anything else?

18 A. Yeah, he became an employee of Sandhills and also then
19 had access to all of our other products and could continue to
20 sell those products and, ultimately, developed Equipmentfacts
21 into a much larger business.

22 Q. I think you just said Mr. Garafola became an employee of
23 the company, correct?

24 A. Yes, correct.

25 Q. How was he paid?

—WELCH - DIRECT - MILLER—

1 A. He was salary.

2 Q. And what was his salary?

3 A. \$170,000 a year.

4 Q. And during the duration of his employment, did he
5 negotiate it up?

6 A. Yes, he negotiated an upside based on the performance of
7 Equipmentfacts.

8 Q. So, ultimately, what then became his salary?

9 A. His salary was \$170,000 a year. And if revenues
10 increased for Equipmentfacts, it would go up, up to as much as
11 \$220,000.

12 Q. And other than the monetary component -- that is, the
13 1.5 million for the sale, purchase of the company and
14 everything involved -- and the employee benefits -- that is,
15 compensation and benefits -- what additional benefits did
16 Mr. Garafola get?

17 A. Access to proprietary information, data. He could then
18 come into our kind of ecosystem and continue to build more
19 products.

20 Q. And was he given access to customers that he hadn't
21 otherwise had experience with in the past?

22 A. Yes.

23 Q. And I think you testified earlier to some of those?

24 A. Uh-huh.

25 Q. You've got to say yes.

—WELCH - DIRECT - MILLER—

1 A. Yes. Sorry.

2 Q. Now, on the flip side, Sandhills pays a lot of money for
3 the acquisition. It pays a lot of money for Mr. Garafola's
4 employment. What's it getting in return?

5 A. We get intellectual property; the knowledge that
6 Mr. Garafola had of the industry; the Equipmentfacts website,
7 trademark; their goodwill; their customer list, both buyer and
8 seller; trademarks.

9 Q. And did you get anything else other than what was,
10 basically, the asset purchase and what came with it?

11 A. Just the knowledge and the intellectual property that
12 Mr. Garafola and his ongoing employment with Sandhills would
13 bring.

14 Q. Did the agreements he signed give any benefits to
15 Sandhills?

16 A. Yes.

17 Q. In particular the non-compete that's attached to the APA?

18 A. Yes.

19 Q. Did Sandhills get a benefit from that?

20 A. Yes, absolutely.

21 Q. What was the benefit, in your words?

22 A. Is that he would not compete with Sandhills for up to 5
23 years.

24 Q. And was there anything else other than the non-compete
25 that tied to the asset purchase?

—WELCH - DIRECT - MILLER—

1 A. Non-solicitation.

2 Q. I think we read earlier, non-interference?

3 A. Yes, correct.

4 Q. And then, as an employee, did Sandhills also get a return
5 on his compensation to him?

6 A. Yes.

7 Q. And in what form did that take?

8 A. We had an Employment Agreement. We also had a
9 non-compete, non-solicitation, duty of loyalty.

10 MR. MILLER: Judge, may I approach the witness?

11 THE COURT: Yes.

12 Mr. Miller, I notice you had this item here marked as
13 an exhibit. Are you going to be moving to have all these
14 admitted or just certain documents?

15 MR. MILLER: Going to be all. I can do it at the end
16 or I can do it right now.

17 THE COURT: No, that's fine. I just noticed this,
18 some of these are and some of them are not.

19 MR. MILLER: Oh. I may have given you the wrong
20 marking.

21 THE COURT: Okay. Well, just make sure, at the end
22 that my courtroom deputy, Gina, has all the documents that
23 we're talking about here.

24 MR. FARSIYOU: Judge, can I just have a quick sidebar?

25 (Off the record.)

—WELCH - DIRECT - MILLER—

1 BY MR. MILLER:

2 Q. Mr. Welch, do you have that document that's been marked
3 P-4?

4 A. Yes.

5 Q. Can you read the title of that document?

6 A. "Employee Proprietary Information Inventions and
7 Non-Solicitation Agreement."

8 Q. Is that the agreement you were earlier testifying about
9 in terms of what Mr. Garafola had to sign as part of being an
10 employee?

11 A. Yes.

12 Q. Now, if you would, can you go to paragraph Number 4?
13 It's on Bates stamp Number Sandhills PI-52. Let me know when
14 you're there.

15 A. Yes, I'm there.

16 Q. What's the title of that paragraph?

17 A. "Duty of Loyalty During Employment."

18 Q. Generally speaking, do you have a familiarity of that
19 paragraph?

20 A. Yes.

21 Q. What's your general understanding of what it provides?

22 A. Is that, while employed with Sandhills, he would not
23 interfere with or try to attract business to outside
24 companies.

25 Q. Now going to paragraph 5. What's that paragraph titled?

—WELCH - DIRECT - MILLER—

1 A. "Non-competition."

2 Q. And what's your understanding relative to that paragraph?

3 A. That he could not compete with Sandhills for up to
4 18 months after the termination of an employment.

5 Q. Yeah. It asks questions about the negotiations of the
6 various agreements.

7 Do you recall that?

8 A. Yes.

9 Q. Did Mr. Garafola negotiate any changes to the terms of
10 this agreement?

11 A. Yes.

12 Q. And what were the changes?

13 A. We initially proposed a 24-month non-competition, and he
14 negotiated it down to 18 months.

15 Q. Now, relative to the scope of the non-compete, that is,
16 paragraph 5, what is the restrictive period and the restricted
17 business that's contemplated by this paragraph?

18 A. The period is 18 months following the termination date of
19 employment.

20 Q. Okay.

21 A. The restrictive is that he cannot do business with or
22 interfere with the business of Sandhills during that time.

23 Q. Is there a particular business that it otherwise
24 contemplates?

25 A. Sandhills and affiliates.

—WELCH - DIRECT - MILLER—

1 Q. So if you look down towards the bottom, there's a --

2 A. Or restrictive business.

3 Q. Correct. Can you read that?

4 A. "The business of providing an online auction platform or
5 online auction services for the" --

6 Q. If you could slow down?

7 A. Yeah. Sorry. "The business of providing an online
8 auction platform or online auction services for the purpose of
9 facilitating the sale of equipment or machinery that is used
10 in the agriculture or construction industries in a manner that
11 competes with the company."

12 Q. Now, if you go to the next page, please. It's paragraph
13 6 that I want to refer you to, Bates stamp Sandhills PI-53.

14 What's the title of that paragraph?

15 A. "No Solicitation of Employees Or Customers."

16 Q. I want you to focus in particular on numerette number ii
17 of that paragraph. Let me know when you're there.

18 A. I'm there.

19 Q. Can you read -- without reading, necessarily, what's your
20 understanding of that provision?

21 A. That he cannot solicit or do business with or accept
22 aid -- or accept aid in the provision of products or services
23 to any other customer -- any of our customers of the company.

24 Q. You've got to blame lawyers for all these words. It's
25 actually "solicit, do business with, or accept or aid in the

—WELCH - DIRECT - MILLER—

1 provision of products and services." Not your fault. It was
2 tough for me to read too.

3 What's your understanding of what that provides?

4 A. That he can't do business with Sandhills companies or
5 customers or affiliates of Sandhills.

6 Q. Or aid?

7 A. Yeah, or aid.

8 Q. Before we go from that document, can you go to paragraph
9 8, please. And let me know when you're there.

10 A. I'm there.

11 Q. And what's the title of that paragraph?

12 A. "Return of Company Property."

13 Q. What's your understanding what that paragraph provides?

14 A. That any property of Sandhills, whether it be
15 intellectual property or physical property, would be returned
16 to Sandhills.

17 Q. You can set those aside for right now.

18 Mr. Welch, did there come a point in time that
19 Mr. Garafola's employment was terminated?

20 A. Yes.

21 Q. And can you describe for the Court what the catalyst was?
22 What happened?

23 A. We became aware of Mr. Garafola competing directly with
24 Equipmentfacts.

25 Q. And how did you become aware of that?

—WELCH - DIRECT - MILLER—

1 A. It started with an email that one of our employees
2 received from Marlene Greene soliciting business for a
3 company, Bidfacts.

4 MR. MILLER: Judge, may I approach the witness?

5 THE COURT: Yes.

6 BY MR. MILLER:

7 Q. Mr. Welch, is that the email that you were just
8 describing that you became aware of?

9 A. Yes.

10 Q. And can you help the Court understand exactly what's
11 happening here? Who's the sender, who's the receiver?

12 A. The sender, it says payments@permian. The signature on
13 the email is Marlene.

14 Q. And who is Marlene?

15 A. Marlene Greene, a former employee of Equipmentfacts that
16 was with Larry for many years.

17 Q. What's the date of this email?

18 A. July 30th.

19 Q. And Marlene Greene was not an employee of Sandhills at
20 that time?

21 A. She was no longer an employee at that time.

22 Q. Did she voluntarily resign?

23 A. Yes.

24 Q. Do you recall about when that was?

25 A. Several weeks before, probably mid to late June.

—WELCH - DIRECT - MILLER—

1 Q. Did you have any concerns -- and who's Colton Rush?

2 A. Colton Rush is a representative for Sandhills Global.

3 Q. Does he report into you?

4 A. Yes.

5 Q. Did Colton bring to you this email?

6 A. Yes.

7 Q. And did you do anything after you received this email?

8 A. Yes.

9 Q. What did you do?

10 A. I brought it to our attorneys in ownership and,
11 ultimately, ended up going out to New Jersey to confiscate the
12 hardware that was still out there from Marlene Greene as well
13 as the hardware from Mr. Garafola.

14 Q. Were those the only two individuals or employees from
15 whom you confiscated the doc -- or the equipment?

16 A. Yes, at that time.

17 Q. And Marlene wasn't there. Was her equipment left behind?

18 A. No, correct, her equipment was left behind. And by "her
19 equipment" I mean her computer and her phone, company-issued
20 phone.

21 Q. And after that confiscation, did you do anything relative
22 to it?

23 A. Yes, we brought it home and implored a third party, 12
24 Points, to do a forensics IT analysis of the devices.

25 Q. And did you receive a findings from that analysis?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. And, generally speaking, what were those findings?

3 A. That the equipment had been wiped.

4 Q. After receiving that email, beyond having retrieved the
5 equipment, did you take any other steps to investigate?

6 A. Yes.

7 Q. What did you do?

8 A. We knew Ms. Greene's personal email address, so we did a
9 monitor of our systems to make sure that no other emails had
10 been sent from her personnel email address to our servers, any
11 of our customers or employees that we host email for.

12 Q. And did you discover any emails?

13 A. Yes.

14 Q. And as best you can recall, what is it you found?

15 A. We found an email between Marlene Greene and Mr. Garafola
16 as well as David Brindley, an employee of Bidpath, which is a
17 competitor, discussing the starting of a new business that
18 would directly compete with Equipmentfacts.

19 MR. MILLER: Judge, may I approach?

20 THE COURT: Yes.

21 BY MR. MILLER:

22 Q. Mr. Welch, is that the email you were just testifying
23 about?

24 A. Yes.

25 Q. Now, it reads, obviously, in reverse. So if you turn to

—WELCH - DIRECT - MILLER—

1 the second page, which is the initial email in that exchange,
2 correct?

3 A. Yes.

4 Q. You don't have to go through the whole thing, but I want
5 you to tell me, are there particular sections or words that
6 are contained in this email that gave you concern?

7 A. Yes, several.

8 Q. And what were they?

9 A. First off, the initial email from Mr. Garafola's personal
10 email address to Ms. Greene's personal email address
11 references that Larry had talked to an attorney and that, at
12 some point, they could, even though they did timed auctions
13 prior to acquisition, they could conduct auctions and compete
14 with AuctionTime, according to his attorney.

15 The second thing that's alarming is Marlene's response,
16 "Great news, Boss."

17 Q. Why is that a concern?

18 A. Marlene was no longer employed by Sandhills, so Larry was
19 not -- and Larry was still employed by Sandhills. So the fact
20 that she was calling him "boss" was alarming.

21 Q. Anything else within the email exchanges?

22 A. Yes. There is the email from David Brindley from
23 Bidpath. And Bidpath is a previous provider of the software
24 that ran Equipmentfacts prior to acquisition and during
25 acquisition up until April. And it's referencing trying to

—WELCH - DIRECT - MILLER—

1 meet up and this meeting not being able to happen because of a
2 delayed flight.

3 And then it goes on, Bidfacts LLC is in place as of July
4 3rd, and it talks about the bank accounts being finalized and
5 tying to QuickBooks. And then it references a new meeting
6 that they plan to have at NAA.

7 Q. And what's NAA?

8 A. NAA is the National Auctioneer Association, which is a
9 convention that is attended by many in the industry, the
10 auction industry.

11 Q. And did Mr. Garafola attend?

12 A. Yes.

13 Q. Did Sandhills pay for his attendance?

14 A. Yes.

15 Q. And am I correct that Mr. Garafola, according to this
16 email, was going to meet with Mr. Brindley from Bidpath not on
17 behalf of Equipmentfacts but on behalf of a different
18 business?

19 A. Yes, Bidfacts LLC.

20 Q. And so, essentially, Mr. Garafola is setting up a
21 competing business while still employed by Sandhills?

22 A. Yes.

23 Q. Other than this email, did you discover any other emails
24 as part of your investigation?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. And, generally speaking, approximately how many emails
2 that you're aware of were uncovered by this investigation?

3 A. Dozens, if not hundreds.

4 Q. And -- but prior to the investigation, you weren't aware
5 that those emails existed, correct?

6 A. No.

7 Q. But you did actually review as part of your supervisory
8 functions the results of that investigation, including the
9 emails themselves?

10 A. Yes.

11 Q. And, Mr. Welch, you've testified I think now three times
12 that you're familiar with Mr. Garafola's personal email
13 address because they appear in the contract documents,
14 correct?

15 A. Yes, in both the purchase agreement and the letter of
16 intent.

17 MR. MILLER: Judge, may I approach?

18 THE COURT: Yes.

19 MR. FARSIUO: Judge, I just want to make one note
20 that -- and I should have said it a little earlier. P-1, and
21 now we're getting into P-7, these are documents that I have
22 not seen before.

23 THE COURT: Thank you.

24 BY MR. MILLER:

25 Q. Mr. Welch, is this one of the emails that you became

—WELCH - DIRECT - MILLER—

1 aware of as part of the investigation?

2 A. Yes.

3 Q. And I apologize for the incredibly small font that's
4 involved with the attachment. We can provide a larger one for
5 the Court.

6 But, Mr. Welch, let's start with the cover page. Who is
7 the sender, who is the receiver?

8 A. Lawrence Garafola was the sender and the receiver.

9 Q. And what's the date of this email exchange or this email?

10 A. June 11th.

11 Q. Of what year?

12 A. 2019.

13 Q. Now, the attachment, if you'll go to that. And in
14 particular what I'm most focused on is the headers that are on
15 the columns. I know it's difficult to read, but are you able
16 to tell the Court what the headers are that appear on the
17 spreadsheet?

18 A. Yes.

19 Q. Would you please do so? Start from left to right.

20 A. Company Name, Bidder Number, Password, Email, First Name,
21 Last Name, Phone Number, Country, State, and Zip Code.

22 Q. Now, Mr. Welch, are you familiar with what this document
23 actually is?

24 A. Yes.

25 Q. And what is it?

—WELCH - DIRECT - MILLER—

1 A. It's a bidder list of bidders that have bid on the oil
2 field equipment.

3 Q. And these bidders would have logged in or utilized the
4 oil field equipment website, correct?

5 A. The Equipmentfacts website, yes.

6 Q. The online auction component of it.

7 A. Yes. Yes.

8 Q. And to access and get use of the Equipmentfacts online
9 functions, they have login credentials?

10 A. Yes. They have to register.

11 Q. And that gives them a user name?

12 A. Yes, correct.

13 Q. As well as a password.

14 A. Yes, correct.

15 Q. And this document has all of the passwords for -- I
16 haven't counted them, but I'm going to say it's over 100
17 bidders. Correct?

18 A. Yes.

19 Q. And do you as -- on behalf of Sandhills consider this
20 document, including, in particular, the passwords, a
21 confidential proprietary document?

22 A. Absolutely.

23 Q. Talking about P-7, that was the bidder document, do you
24 have any concern with the fact that it otherwise existed or
25 was sent from Mr. Garafola's personal email address?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. What's your concern?

3 A. This is our lifeblood. This is really, truly how we make
4 our money. The bidders that come to our platform, when they
5 purchase an item online, we get a percentage of that. So
6 having these bidders is the key to the business.

7 Q. And if an individual has that bidder list, can they
8 target or somehow advertise to bidders more focused and more
9 effectively?

10 A. Yes.

11 Q. Any reason you can think of why Mr. Garafola has the
12 bidders' passwords?

13 A. No.

14 Q. Does that give you concern?

15 A. Yes.

16 MR. MILLER: Judge, may I approach?

17 THE COURT: Yes.

18 BY MR. MILLER:

19 Q. Mr. Welch, is this another email that was uncovered by
20 the investigation?

21 A. Yes.

22 Q. Can you tell me in the first -- or the last email
23 exchange in it who's the sender, who's the receiver?

24 A. Larry Garafola is the sender and Larry Garafola's
25 personal email is the receiver.

—WELCH - DIRECT - MILLER—

1 Q. Going to the body of this email, you'll see the email
2 between Ms. Greene, that is, Marlene Greene, and Mr. Garafola.
3 Do you see that?

4 A. Yes.

5 Q. What date is that exchange?

6 A. May 23rd.

7 Q. So Ms. Greene was employed at least as long as May 23rd,
8 2019?

9 A. Yes.

10 Q. And then, what, for the Court's benefit, what's being
11 described here?

12 A. These are all the auctions that were over \$40,000 in
13 commission and the size of the overall sale.

14 Q. And do you consider that information to be confidential
15 and proprietary to Sandhills and Equipmentfacts?

16 A. Absolutely.

17 Q. And do you have any concerns that ultimately -- well, let
18 me stop. The "to/from" that is Larry to Larry, what's the
19 date of that email?

20 A. June 14th.

21 Q. What year?

22 A. 2019.

23 Q. So it's being sent from Equipmentfacts to Mr. Garafola's
24 personal email account, correct?

25 A. Yes. Correct.

—WELCH - DIRECT - MILLER—

1 Q. Do you have a concern that Mr. Garafola has, as you've
2 described, Sandhills' confidential and proprietary information
3 at his personal account?

4 A. Yes.

5 Q. But why?

6 A. This is our, basically, top list of customers. Not only
7 is it the top list of customers, it's what they paid us for
8 our services.

9 Q. And could a person that's going to compete against
10 Sandhills utilize this information?

11 A. Yeah. They could undercut our commission.

12 Q. So they have, basically, your commissions, or, rather,
13 what the commissions were paid. And if, ultimately, they
14 adjusted their pricing, they could somehow come underneath
15 what Equipmentfacts charges.

16 A. Yes.

17 Q. And, just real quick, go to the first email exchange in
18 that. That's the second page.

19 What's Larry's request to Marlene that generates that
20 list?

21 A. "Can you come up with the top five auctioneers that had
22 the highest revenue?"

23 Q. And, ultimately, is that what Marlene provided to him?

24 A. Yes.

25 Q. So, basically, it's, at least at this period of time,

—WELCH - DIRECT - MILLER—

1 Sandhills Equipmentfacts' top customers.

2 A. Yes.

3 Q. Their sales?

4 A. Yes.

5 Q. Their commissions?

6 A. Yes.

7 Q. And Mr. Garafola now has this in his personal email
8 address.

9 A. Correct.

10 Q. Could a competitor use it to undercut Sandhills?

11 A. Absolutely.

12 MR. MILLER: Judge, may I approach?

13 THE COURT: Yes.

14 MR. FARSIUO: Judge, this would be the same
15 objection.

16 BY MR. MILLER:

17 Q. Mr. Welch, is this another email that you uncovered as
18 part of the investigation?

19 A. Yes.

20 Q. This document is Bates-stamped Sandhills PI-72 through
21 -81.

22 Mr. Welch, first, can you describe for the Court what
23 email exchanges are occurring, starting, in particular, with
24 the earliest one?

25 A. It's an email from Larry Garafola's Equipmentfacts email

—WELCH - DIRECT - MILLER—

- 1 address to Larry Garafola's personal email address.
- 2 Q. And then there's another email on top of that.
- 3 Do you see that?
- 4 A. Yes.
- 5 Q. And without waiving or describing any of attorney-client
- 6 communications, what's happening with that email exchange?
- 7 A. I'm forwarding it to my internal counsel.
- 8 Q. And your internal counsel here is referenced as?
- 9 A. Alex Essay.
- 10 Q. And Mr. Essay is sitting to my right, to your left?
- 11 A. Yes, correct.
- 12 Q. Now, there's an attachment to this. Do you see that?
- 13 A. Yes.
- 14 Q. And what's the name of that attachment?
- 15 A. Top Bidders List.
- 16 Q. And go to the actually attachment itself. Is there a
- 17 header on that document?
- 18 A. Yes.
- 19 Q. I know a little bit's cut off, but can you read for the
- 20 record what that header is?
- 21 A. Equipmentfacts LLC Top Bidders 2017 to Present.
- 22 Q. Do you see -- excuse me -- the chart that there follows?
- 23 A. Yes.
- 24 Q. And it's numbered by rankings?
- 25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. How many people are ranked or how many customers are
2 ranked, or clients?

3 A. 500.

4 Q. And this doesn't mean much to me, but can you describe
5 for the Court what it is, whether it's proprietary, and the
6 significance to you?

7 A. Yes, it's absolutely proprietary. This is our bidder
8 list. This is the top five bidders that spent the most money
9 on Equipmentfacts from 2017 to present.

10 That's not anything that can be available to the public.
11 No one could possibly know how much M. Nolan Farms spent
12 through Equipmentfacts.

13 Q. And what's the time frame of which this bidder ranking
14 covers?

15 A. 2017 to present.

16 Q. So this is printed out or at least emailed to
17 Mr. Garafola, to himself, July 16, 2019. So approximately two
18 years' worth?

19 A. Yes.

20 Q. Does Sandhills expend money to otherwise not only
21 generate the sales but to account for them and track them?

22 A. Yes.

23 Q. And does the -- Sandhills pay its account representatives
24 to otherwise service those accounts to get the information
25 that ultimately rolls up into this kind of chart?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. And could any competitor use this information to compete
3 against Sandhills?

4 A. Yes, absolutely.

5 Q. And how would they do so?

6 A. This is a target list of if you were to -- you know who
7 the most active buyers are in the market, and you can market
8 to those buyers. And that's how you make revenue is based on
9 what they spend on your platform.

10 Q. And could they take -- you see here there's the sales on
11 it.

12 Do you see that?

13 A. Yes.

14 Q. Is there, at least with respect to Sandhills, can you
15 apply a formula or a percentage that would show what the
16 commissions or revenue is off of those sales?

17 A. Yeah. We charge 2 percent for the sales, so 2 percent of
18 whatever that person spends is what we make.

19 Q. And Mr. Garafola, while employed by Sandhills at
20 Equipmentfacts, he was aware of that 2 percent figure,
21 correct?

22 A. Yes.

23 Q. So if a person, Mr. Garafola or anyone else, had this
24 information, they could extrapolate out the sales or the
25 commissions based off of it?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Could they use it to undercut Sandhills and the business
3 in its targeting effort?

4 A. Yes.

5 Q. How would they do so?

6 A. They can undercut our pricing.

7 Q. Do you have concern that Mr. Garafola emailed this to
8 himself on July 16th, 2019?

9 A. Yes, absolutely.

10 Q. You know, I failed to tie it out before. Mr. Garafola's
11 employment was terminated, correct?

12 A. Yes.

13 Q. Well, we'll get to it. What date was his employment
14 terminated?

15 A. August 7th.

16 Q. So it's a couple weeks after this email he forwarded to
17 himself?

18 A. Yes.

19 MR. MILLER: Judge, may I approach?

20 THE COURT: Yes.

21 BY MR. MILLER:

22 Q. Mr. Welch, is this another email that you uncovered as
23 part of the investigation?

24 A. Yes.

25 Q. Now, look at the -- staying with the first email that

—WELCH - DIRECT - MILLER—

1 appears on this piece of paper.

2 Are you there?

3 A. Yes.

4 Q. Who's the "from" and who's the "to"?

5 A. It's from Larry Garafola's Equipmentfacts email address
6 to his wife, maureenmodridge@earthlink.net's email address.

7 Q. And how do you know that that's Mrs. Garafola's email
8 address?

9 A. In our investigation, we saw several emails back and
10 forth between Larry and his wife referencing their
11 relationship.

12 Q. And that was the email that appeared in those exchanges?

13 A. Yes.

14 Q. Now, this document that we're looking at here, the
15 attachment, what's the name of the attachment?

16 A. Top Bidders.

17 Q. Now, if you go back real quickly, and I don't want you to
18 necessarily go into it, but go back to P-9 real quick.

19 A. Okay.

20 Q. What's the name of that attachment?

21 A. Top Bidders.

22 Q. What's the -- the email in which Mr. Garafola sends it to
23 his Gmail, what's the date?

24 A. July 16th.

25 Q. And what's the time?

—WELCH - DIRECT - MILLER—

- 1 A. 3:18.
- 2 Q. In the afternoon?
- 3 A. Yes, p.m.
- 4 Q. Go to the top of P-10. What's the date?
- 5 A. July 16th.
- 6 Q. What's the time?
- 7 A. 4:16 p.m.
- 8 Q. Now, do you know whether there was any translation
- 9 issues? Because we're East Coast, Sandhills is Central.
- 10 Could it have been an hour before or was it the same time it
- 11 was sent? Do you have any information about that?
- 12 A. These would have both been in the same time zones, so
- 13 they're correct.
- 14 Q. So -- and then, just real quickly, on P-10, the one
- 15 that's sent to Mrs. Garafola's email address, just look at
- 16 that chart. There is actually two attachments.
- 17 A. Yes.
- 18 Q. Both called bidders -- the Top Bidders, correct?
- 19 A. Yes.
- 20 Q. One's an XLSX file. That's an Excel file?
- 21 A. Correct.
- 22 Q. And the other is a PDF. Do you see that?
- 23 A. Yes.
- 24 Q. Any thoughts as to why someone would attach two versions
- 25 of the same document? And, oh, let's put it this way. Would

—WELCH - DIRECT - MILLER—

1 you ever attach an Excel file and a PDF file to an email
2 versus just one or the other?

3 A. Excel, I would, if I planned to manipulate it and use it
4 in some other form.

5 Q. And what kind of form could you manipulate or use it?

6 A. You could turn into a marketing list or import it into a
7 business system or something like that.

8 Q. So you could almost merge the data that's within it into
9 a mail merge or some kind of other program?

10 A. Yes.

11 Q. Now, the time that these were sent, 4:16 and 3:18.

12 Mr. Garafola, according to these two emails, sent himself, or
13 sent to his wife, the very same document on the very same day
14 within an hour of each other, correct?

15 A. Yes.

16 Q. You can't get into Mr. Garafola's head, but you testified
17 that this is a significant document. If, ultimately, you are
18 otherwise wanting to target a document that might be useful
19 for competition, would this be that document?

20 A. Yes. This is the lifeblood of our --

21 MR. FARSIUO: I have to object to this. I mean, this
22 is -- I mean, he's essentially asking the witness to testify
23 for my client as to what his thoughts were or what he was
24 doing. Mr. Garafola can testify to that. This is -- I know
25 we're relaxing the evidence rules, but that's going a little

—WELCH - DIRECT - MILLER—

1 too far.

2 THE COURT: And your objection is so noted for the
3 record.

4 The Court will receive the testimony, but it's
5 limited in scope as to the witness's ability to testify here.

6 So the objection is so noted for the record.

7 BY MR. MILLER:

8 Q. Mr. Welch, in P-10, other than what you've already
9 testified to, is there any other information or concerns you
10 have about Mr. Garafola having sent it now not just to himself
11 but to his wife's email account?

12 A. Yes. Now it's -- I mean, it's out there to two different
13 people.

14 The other thing that's concerning is that this came from
15 another employee from the New Jersey Equipmentfacts office
16 that was with Larry pre-acquisition, Roselle Denina.

17 Q. And did she become an employee of Sandhills after the
18 acquisition?

19 A. Yes.

20 Q. And you testified earlier Mr. Garafola's employment was
21 terminated. Were other individuals' employment terminated?

22 A. Yes.

23 Q. Was Roselle one of them?

24 A. Yes.

25 Q. And was the termination because of her involvement in

—WELCH - DIRECT - MILLER—

1 this?

2 A. Yes.

3 Q. Anything else about that document you'd like the Court to
4 be aware of?

5 A. No.

6 THE COURT: Mr. Miller.

7 MR. MILLER: Yes.

8 THE COURT: By way of time, we're going to take a
9 short restroom break at about 11:30, and we'll take a
10 ten-minute morning break, and we'll try and take a half an
11 hour for lunch at about 1 o'clock.

12 MR. MILLER: That works perfect. Thank you.

13 Judge, may I approach?

14 THE COURT: Yes.

15 BY MR. MILLER:

16 Q. Mr. Welch, is this another email that you uncovered as
17 part of the investigation?

18 A. Yes.

19 Q. Let's start with the cover email, that is, the one at the
20 bottom. Who is it from and to?

21 A. From Ryan Jacobi.

22 Q. And who is Ryan Jacobi?

23 A. He's an employee of Equipmentfacts in the New Jersey
24 office.

25 Q. And who is it to?

—WELCH - DIRECT - MILLER—

1 A. Larry Garafola.

2 Q. And to which email account?

3 A. To his Sandhills Equipmentfacts email address.

4 Q. And, for the record, can you read what Ryan is telling
5 Mr. Garafola in the initial email?

6 A. "Attached is a sample of the welcome email in .docs form
7 and accompanying attachments."

8 Q. Now, there is an attachment line here that has multiple
9 attachments in there.

10 Do you see that?

11 A. Yes.

12 Q. Some of them have an att.htm designation.

13 Do you see that?

14 A. Yes.

15 Q. Those aren't substantive attachments, are they?

16 A. No.

17 Q. Now, but there are descriptions of documents that are
18 attached to that email, correct?

19 A. Yes.

20 Q. Can you, going from line to line, just read what the
21 attachment names are called?

22 A. Equipmentfacts 2 Column Live Sale Template,
23 Equipmentfacts 3 Column Live Sale Template, Equipmentfacts 4
24 Column Live Sales Template, How to Create Invoices,
25 Equipmentfacts 4 Column Live Sales Template.

—WELCH - DIRECT - MILLER—

- 1 Q. How to Create an Invoice Manual?
- 2 Do you see that one?
- 3 A. Yes.
- 4 Q. How to Generate Reports Manual?
- 5 Do you see that one?
- 6 A. Yes.
- 7 Q. How to Manage Your Bidders Manual?
- 8 Do you see that?
- 9 A. Yes.
- 10 Q. How to Upload Your Photographs Manual?
- 11 A. Yes.
- 12 Q. How to Upload Your Sale Day Catalog Manual?
- 13 A. Yes.
- 14 Q. How the Auctioneer Pop-Up Projector Functions? Looks
- 15 like a PowerPoint presentation?
- 16 A. Yes.
- 17 Q. And Equipmentfacts 3.0, Creating and Uploading Live
- 18 Auction Manuals.
- 19 Do you see that?
- 20 A. Yes.
- 21 Q. Now, I'm not going to have you go through these in a lot
- 22 of detail, but ultimately -- and the attachments to this
- 23 document, this email was sent by Mr. Garafola to whom?
- 24 A. To his personal Gmail account.
- 25 Q. And what date was it sent on?

WELCH - DIRECT - MILLER

- 1 A. July 18th.
- 2 Q. What year?
- 3 A. 2019.
- 4 Q. What time?
- 5 A. 7:38 p.m.
- 6 Q. P-10 and -9 were sent on July 16th, correct?
- 7 A. Yes.
- 8 Q. So this is three days later?
- 9 A. Yes.
- 10 Q. Now, as to the attachments, generally speaking, do you
- 11 have concerns with Mr. Garafola having sent these attachments
- 12 to his home email address?
- 13 A. Absolutely.
- 14 Q. Why?
- 15 A. It's the culmination of all the experience in how to set
- 16 up an auction and how to conduct an auction.
- 17 Q. And that's what you bought for 1.5 million.
- 18 A. Yes.
- 19 Q. Now, in looking through this, I'd ask you to turn
- 20 specifically to Sandhills -- this is the Bates stamp number,
- 21 bottom right corner of the document, Sandhills PI-113. Let me
- 22 know when you're there.
- 23 A. I'm there.
- 24 Q. And that document right there is called "How to Create
- 25 Invoices"?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Do you see some kind of designation on the bottom above
3 the Bates stamp?

4 A. Copyright 2018 Equipmentfacts LLC, all rights reserved.

5 Q. We testified earlier, or you testified earlier, as to
6 what Sandhills was purchasing.

7 Do you remember that?

8 A. Yes.

9 Q. And some of it was the copyright information?

10 A. Yes, correct.

11 Q. Was this part of that copyright information?

12 A. Yes.

13 Q. And did you give Mr. Garafola permission to send this
14 document or any of the other emails with attachments to his
15 home email address?

16 A. No.

17 Q. Do you have concern that Mr. Garafola has this document
18 within his email account, his Gmail account?

19 A. Yes.

20 Q. Why?

21 A. Because this is how to -- this is giving you a guide to
22 how to create a competing business, Equipmentfacts 2.0, if you
23 will.

24 Q. Anything else? I mean, we can go through each of them.
25 I don't want to belabor the Court's time. But there's a lot

—WELCH - DIRECT - MILLER—

1 of manuals here; correct?

2 A. Yes.

3 Q. It's basically how to build a car and then how to run it.

4 A. Yes. Yes.

5 Q. Is that an accurate description or analogy?

6 A. Yes.

7 MR. MILLER: Judge, may I approach?

8 Q. Mr. Welch, is this another email that was uncovered in
9 the investigation?

10 A. Yes.

11 Q. Going down to the first email in the exchange, do you see
12 that? It's from Ryan?

13 A. Yes.

14 Q. And to whom is Ryan sending the email?

15 A. To Larry Garafola's personal email account.

16 Q. Is it coming from Ryan's Equipmentfacts account?

17 A. Yes.

18 Q. What's the date of that email?

19 A. July 25th.

20 Q. What year?

21 A. 2019.

22 Q. And the P-11 was sent on July 18, 2019, so a couple days
23 later, correct?

24 A. Yes.

25 Q. Again, there are several attachments to it, correct?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. There is a top email that ends this chain.

3 Do you see that?

4 A. Yes.

5 Q. And who is the "from" and who is the "to"?

6 A. From myself to Alex Essay, internal counsel.

7 Q. In-house counsel?

8 A. Yes.

9 Q. And you felt it important enough to send to in-house
10 counsel -- don't get into any of the substance, just answer
11 the question -- this email with the attachments?

12 A. Yes.

13 Q. And we'll go into the descriptions or the titles, but why
14 is it that it was important to you as the business person?

15 A. Because, again, this is the lifeblood of how to create
16 Equipmentfacts 2.0.

17 Q. And so, for the record, can you read off the titles or
18 the names of the attachments?

19 A. Auction Flex to Equipmentfacts Manual, Auction Scheduling
20 and Audio Recording Protocol, Bidpath NMI Settings v2, Pause
21 Bidding Checkbox Settings, How to Set Up For a Remote
22 Broadcast Manual, How to Upload Your Photographs, How to
23 Upload Your Sale Day Category Manual, How to Create a Live
24 Auction Manual, How to Create a Timed Auction Manual, How to
25 Create Invoices Manual, How to Generate Reports Manual, and

—WELCH - DIRECT - MILLER—

1 How to Manage Your Bidders Manual.

2 Q. Going up to -- you mentioned there's an attachment,

3 Bidpath NMI Settings Version -- or v2. What is Bidpath?

4 A. Bidpath was the online bidding software that was used at
5 the time of acquisition to run Equipmentfacts.

6 Q. And you testified earlier as to an email exchange between
7 Marlene, Larry Garafola Sr., and the owner of Bidpath,
8 correct?

9 A. The president of Bidpath.

10 Q. The president of Bidpath.

11 A. Yes. David Brindley.

12 Q. And would Mr. Brindley have any use for this Bidpath NMI
13 settings, version 2?

14 A. I mean, yes, if you were -- if they were creating a new
15 business, yes.

16 Q. These documents, the attachments that are referenced, you
17 testified earlier the concern was this is essentially how they
18 can create Equipmentfacts 2.0, correct?

19 A. Yes.

20 Q. Is that further concern -- is that further concern -- or
21 was that concern furthered by these documents having been
22 transmitted from Ryan Jacobi to Mr. Garafola's personal email
23 account?

24 A. Yes.

25 Q. And again, if you could, go to the document Bates stamp

—WELCH - DIRECT - MILLER—

1 Sandhills PI-163.

2 A. Okay.

3 Q. Is there a designation at the bottom?

4 A. Copyright Equipmentfacts 2018, all rights reserved.

5 Q. Sandhills paid 1.5 million for that, correct?

6 A. Yes, correct.

7 Q. Didn't authorize Mr. Garafola to send it -- or have it
8 sent to him at his personal email account, correct?

9 A. Correct.

10 THE COURT: Counsel, we're going to go ahead and take
11 our morning break at this time.

12 It's 11:33. We're going to take a ten-minute break.
13 We'll resume at roughly 11:43 or 11:45.

14 THE DEPUTY COURT CLERK: All rise.

15 (Short recess is taken.)

16 THE DEPUTY COURT CLERK: All rise.

17 (Open court begins at 11:44 a.m.)

18 THE COURT: Please be seated.

19 Folks, again, we're trying to, basically, keep the
20 matter moving. I'm not going to go through a formality.

21 The witness, during any break, of course, you're
22 still under oath. I'm reminding you that you're under oath.

23 So we're just going to go ahead and continue and jump
24 right back into it.

25 So, Mr. Miller, you can go ahead and proceed. It's

—WELCH - DIRECT - MILLER—

1 still your witness.

2 MR. MILLER: Thank you, Judge.

3 Q. Mr. Welch, you've been testifying as to emails that you
4 discovered as part of the investigation, correct?

5 A. Yes.

6 Q. As to one of the emails that sort of triggered this all,
7 can you go back to the email that's marked as P-6? This is
8 the email between Marlene Greene and David Brindley?

9 A. Yes.

10 Q. Can you put that in front of you, please?

11 A. Yup.

12 Q. Again, what's the date of that email?

13 A. July 7th.

14 Q. And we've been talking about emails that have been
15 exchanged, or at least uncovered, as part of the
16 investigation, sent by Mr. Garafola or others to his Gmail
17 account, correct?

18 A. Yes.

19 Q. And several of the emails that you testified about
20 occurred or were sent after this July 7, 2019, email with
21 David Brindley, correct?

22 A. Yes. I believe all of them.

23 Q. Now, I count, and the record will reflect the accurate,
24 but I count approximately six to seven emails with multiple
25 attachments sent by Mr. Garafola or someone on his behalf to

—WELCH - DIRECT - MILLER—

1 his Gmail account between -- or after the Marlene Greene-David
2 Brindley email and, ultimately, through July 25, 2019.

3 Does that sound about accurate?

4 A. Yes, correct.

5 Q. Do you have concerns about that sequence of events, that
6 is, the Brindley email and then, ultimately, there's emails
7 being sent to Mr. Garafola's Gmail account?

8 A. Yes, absolutely.

9 Q. And what's your concern?

10 A. There's the talk of starting the new business,
11 Equipmentfacts 2.0. And then, in the weeks following, there's
12 the raiding of all of Sandhills' intellectual property and
13 intellectual property of Equipmentfacts.

14 Q. And as a manager or a supervisor at Sandhills, who
15 purchased for \$1.5 million Equipmentfacts, what about that in
16 particular gives you concern?

17 A. We purchased the intellectual property, the goodwill, and
18 he took all of that to then start a business that would
19 directly compete with Equipmentfacts, the business we paid
20 \$1.5 million for.

21 Q. And remind the Court, at this time, that is, the Brindley
22 email is sent, is Marlene Greene an Equipmentfacts employee?

23 A. She's no longer an Equipmentfacts employee.

24 Q. Yet, according to the Brindley email that is P-6, she's
25 otherwise coordinating with Mr. Brindley and Mr. Garafola to

—WELCH - DIRECT - MILLER—

1 create a competing business, correct?

2 A. Yes.

3 Q. And Mr. Garafola is then sending what you've described as
4 is essentially the foundation for Equipmentfacts to his
5 personal email account at the very same time or shortly
6 thereafter.

7 A. Yes, correct.

8 Q. You can put that one away now. Thank you.

9 MR. MILLER: Judge, may I approach?

10 THE COURT: Sure.

11 BY MR. MILLER:

12 Q. Mr. Welch, is this another email that was uncovered as
13 part of the investigation?

14 A. Yes.

15 Q. And if you go to the bottom of the first page that is
16 Bates-stamped Sandhills PI-178, is that the initial email that
17 starts the exchange?

18 A. Yes.

19 Q. And who is the sender, who is the recipient?

20 A. Ryan Jacobi is the sender. Larry Garafola's personal
21 Gmail account is the receiver.

22 Q. And what's the date?

23 A. July 25th --

24 Q. Of what year?

25 A. -- 2019.

—WELCH - DIRECT - MILLER—

- 1 Q. And what time?
- 2 A. 8:46 a.m.
- 3 Q. Now, going further up, there's another email exchange
- 4 after that, correct?
- 5 A. Yes.
- 6 Q. And I want, just for purposes of time zone clarification,
- 7 the first email is 8:46 a.m.
- 8 Do you see that?
- 9 A. Yes.
- 10 Q. The one that -- subsequent one is at 7:50 a.m.
- 11 Do you see that?
- 12 A. Yes.
- 13 Q. We don't travel back in time, correct?
- 14 A. Correct.
- 15 Q. Do you believe that that's the result of a time -- the
- 16 server from which these emails are being sent be on Eastern
- 17 time or Central?
- 18 A. Most likely.
- 19 Q. Now, there's the email exchange from Ryan to
- 20 Mr. Garafola's personal email account July 25, 2019, at
- 21 7:50 a.m. Can you read the text of what he's sending to --
- 22 Ryan is sending to Mr. Garafola?
- 23 A. "Here is the link to the download our video tutorials."
- 24 Q. Where is it going to?
- 25 A. To Dropbox.

—WELCH - DIRECT - MILLER—

1 Q. And what's Dropbox?

2 A. A secure -- a secure third-party platform that could be
3 used to drop or intercept whatever -- any documents that you
4 might want to put in there.

5 Q. So, essentially, it resides in the cloud, and you could
6 put documents that can be retrieved from another individual?

7 A. Yes.

8 Q. Does that reflect there that this is an approved
9 Sandhills or Equipmentfacts Dropbox?

10 A. No.

11 Q. Did Mr. Jacobi get authorization from you or anybody in
12 authority at Sandhills or Equipmentfacts to put video
13 tutorials in that Dropbox?

14 A. No.

15 Q. Now, going up to the email exchange at the very top,
16 that's your email to Mr. Essay, the in-house counsel, correct?

17 A. Yes, correct.

18 Q. And this reflects, in terms of in the attachment line,
19 certain of the documents that were attached to the email.

20 Does it?

21 A. Yes.

22 Q. For the record, can you read the names of the attachments
23 that appear in the attachment line?

24 A. How to Create a Timed Auction Manual, How to Create
25 Invoices Manual, How to Generate Reports Manual, How to Manage

—WELCH - DIRECT - MILLER—

1 Your Bidders Manual, How to Set Up a Remote Broadcast Manual,
2 How to Upload Your Photographs Manual, How to Upload Your Sale
3 Day Catalog Manual, How to Create a Live Auction Manual, and
4 Distribution Spreadsheet.

5 Q. Mr. Welch, look at the actual attachments. I don't want
6 you to go into great detail and study them, but are you
7 familiar, as part of this litigation, as to what the
8 attachments are?

9 A. Yes.

10 Q. And for the Court's benefit, generally speaking, what is
11 it your impression of the documents that are attached?

12 A. It's a guide to how to set up and how to create auctions
13 and invoices and uploading catalogs, everything you'd need to
14 put on an auction through an online platform.

15 Q. Essentially, the user manual how to create an auction
16 business?

17 A. Yes, correct.

18 Q. And if you go to the document Bates-stamped Sandhills
19 PI-180?

20 A. Yes.

21 Q. And the designation on the bottom of that?

22 A. Copyright 2018 Equipmentfacts LLC.

23 Q. And the documents that otherwise have that designation,
24 that's what Sandhills purchased, correct?

25 A. Correct.

—WELCH - DIRECT - MILLER—

1 Q. And you didn't authorize anyone to send these documents
2 to Mr. Garafola's personal email account, correct?

3 A. Correct.

4 MR. MILLER: Judge, may I approach?

5 THE COURT: Yes. And, Counsel, you don't have to
6 keep asking.

7 MR. MILLER: Okay.

8 THE COURT: You can just keep rolling right through
9 it.

10 MR. MILLER: Got you. Thank you.

11 Q. Mr. Welch, is this another email that was uncovered as
12 part of the investigation?

13 A. Yes.

14 Q. And, for the record, there's an email exchange on
15 July 25th.

16 Do you see that?

17 A. Yes, correct.

18 Q. Who's the sender, who's the receiver?

19 A. Ryan Jacobi is the sender, Larry Garafola's personal
20 Gmail is the receiver.

21 Q. And again, that date is July what?

22 A. 25th, 2019.

23 Q. And what time is that?

24 A. 7:52 a.m.

25 Q. And I'll represent, or if you can go back, P-13 was sent

—WELCH - DIRECT - MILLER—

1 on July 25th, 7:50 a.m.; P-12, was sent on Thursday, July 25,
2 2019, at 7:47 a.m.

3 Is that accurate?

4 A. 7:52 a.m.? Is that what we're looking at?

5 Q. Correct, yeah, 7:52.

6 A. Yes.

7 Q. Then if you go to P-13?

8 A. Yes.

9 Q. What time is that email sent?

10 A. 7:50 a.m.

11 Q. If you go to P-12?

12 A. 7:47 a.m.

13 Q. Mr. Welch, and you may have mentioned it before,
14 Mr. Jacobi, was his employment terminated?

15 A. Yes.

16 Q. And what was the reason?

17 A. Again, the emails that were found in here.

18 Q. Now, Mr. Welch, there is an attachment to this document,
19 correct?

20 A. Yes.

21 Q. And can you read what the attachment's name is?

22 A. PowerPoints 1 and 2.

23 Q. And what's the file type?

24 A. A zip file.

25 Q. For the Court's benefit, what is a zip file?

—WELCH - DIRECT - MILLER—

1 A. It's a file that could be sent, and it's typically used
2 to send larger files.

3 Q. It compresses them?

4 A. Yes.

5 Q. So that it's more easily transmitted over the internet --

6 A. Correct.

7 Q. -- or through email? Now, just peruse briefly, if you
8 will, through these pages. What is the PowerPoint

9 presentation, the PowerPoint presentation plural, that's
10 represented in the attachment?

11 A. It's a guide to everything about setting up and running
12 an online auction.

13 Q. And the PowerPoint presentation begins at Bates stamp
14 Sandhills PI-203 and ends at Sandhills PI-361, correct?

15 A. Correct.

16 Q. So we got over 100 pages of PowerPoint presentations.

17 A. Correct.

18 Q. And, as you've just described, this is essentially,
19 again, how to set up an online auction business from soup to
20 nuts.

21 A. Yes, correct.

22 Q. Mr. Welch, is this another email that you uncovered as
23 part of the investigation?

24 A. Yes.

25 Q. And this is sent on what date? And not from you, you to

—WELCH - DIRECT - MILLER—

- 1 Alex Essay, but Mr. Jacobi to Mr. Garafola.
- 2 A. Thursday, July 25th, 2019.
- 3 Q. And at what time?
- 4 A. 7:58 a.m.
- 5 Q. And P-14 was sent at what time?
- 6 A. 7:52 a.m.
- 7 Q. On July 25?
- 8 A. Correct.
- 9 Q. So a couple minutes later, this was sent?
- 10 A. Yes.
- 11 Q. That is, P-15 was sent?
- 12 A. Yes, correct.
- 13 Q. There are attachments to the document, correct?
- 14 A. Yes.
- 15 Q. And there are -- the names of those attachments appear in
- 16 the attachments line, correct?
- 17 A. Yes.
- 18 Q. Without having gone through them all, some of them look
- 19 familiar. Is that true?
- 20 A. Yes.
- 21 Q. Are you aware whether this is a duplicate email or is
- 22 this a separate email that was sent by Ryan?
- 23 A. Looks to be a separate email that was sent, but some of
- 24 the content may be the same.
- 25 Q. And if you'll turn to Bates stamp Sandhills PI-383.

WELCH - DIRECT - MILLER

1 A. Okay.

2 Q. Is there a designation at the bottom?

3 A. Yes.

4 Q. And what does it say?

5 A. Copyright 2018 Equipmentfacts LLC.

6 Q. And again --

7 A. We --

8 Q. -- Sandhills purchased that for \$1.5 million, correct?

9 A. Yes, correct.

10 Q. Mr. Welch, is this another email you uncovered as part of
11 the investigation?

12 A. Yes.

13 Q. Now, I'm wondering whether this was -- let me go back.
14 Actually, I will strike that.

15 This is a duplicate of P-15. So P-16 is not -- I can
16 take it back or you guys can keep it, but we're not going to
17 use that one.

18 Mr. Welch, is this another email you discovered as part
19 of the investigation?

20 A. Yes.

21 Q. And who is the -- on the first email on the chain, who is
22 the sender, who is the receiver?

23 A. Ryan Jacobi, and Larry Garafola's personal Gmail account.

24 Q. And what I'd like you to do is go to the second page of
25 that document, Bates stamp Sandhills PI-426, the first email

—WELCH - DIRECT - MILLER—

1 that appears on that page.

2 Do you see it?

3 A. Yes.

4 Q. And you earlier testified as to an email, I believe, that
5 is similar that's referenced here. Manual 12?

6 A. Yes.

7 Q. The subsequent emails are exchanged between Mr. Garafola
8 and Mr. Jacobi, correct?

9 A. Yes.

10 Q. And can you tell -- strike that.

11 Going into the email exchange that's dated July 25, 2019,
12 at 9:05 a.m.

13 Do you see that?

14 A. Yes.

15 Q. Who's the sender, who's the receiver?

16 A. Larry Garafola's personal Gmail account is the sender,
17 Ryan Jacobi's Sandhills Equipmentfacts email address is the
18 receiver.

19 Q. And what's the text that appears there?

20 A. Mr. Garafola's asking whose Dropbox is this.

21 Q. And Mr. Jacobi responds how?

22 A. Info@equipmentfacts.com.

23 Q. Did Mr. Jacobi have authority to otherwise put the videos
24 in the info@equipmentfacts.com Dropbox?

25 A. No.

—WELCH - DIRECT - MILLER—

1 Q. Do you know whether -- strike that.

2 Do you know the purpose for Sandhills or Equipmentfacts
3 to be using that info@equipmentfacts.com Dropbox?

4 A. Yeah. To exchange documents.

5 Q. And again, you didn't authorize Mr. Garafola or
6 Mr. Jacobi to put the videos into that Dropbox, correct?

7 A. No.

8 Q. Now, we have Marlene Greene -- and, you know, I've been
9 talking about Marlene Greene in the abstract. Is Marlene
10 Greene in this courtroom today?

11 A. Yes.

12 Q. And where is she?

13 A. She's sitting back there in the front row.

14 Q. We have Marlene Greene exchanging emails with Bidpath
15 president Mr. Brindley, correct?

16 A. Yes, correct.

17 Q. Mr. Garafola's on that email exchange, correct?

18 A. Yes, correct.

19 Q. And the testimony will be what it is, but the summary is
20 they were sort of orchestrating the creation of a new
21 business, correct?

22 A. Yes.

23 Q. And Mr. Garafola was currently employed by Sandhills at
24 that time.

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. And then, shortly thereafter, there is a flurry of emails
2 being sent either to Mr. Garafola's Gmail account or from it
3 with Equipmentfacts' confidential information.

4 A. Yes, correct.

5 Q. And then you get to the point where -- do you recall how,
6 you testified earlier, how it is that, ultimately, the
7 investigation started?

8 A. It started with the email from Marlene Greene on behalf
9 of Bidfacts to one of our employees.

10 Q. And do you find the timing of that curious?

11 A. Yes.

12 Q. Why?

13 A. Because it was right around the time that all of this
14 mass -- mass -- this information was being exported and raided
15 from Sandhills.

16 Q. Do you recall -- and if you don't, that's fine -- within
17 what is quite voluminous attachments and documents and
18 spreadsheets, was Permian's information included in any of
19 those attachments?

20 A. Well, not Permian's -- oh, yeah. Permian's information
21 was that they were one of our top customers.

22 Q. And so Mr. Garafola is sending, among other things, an
23 email with an attachment that has Permian information?

24 A. Yes.

25 Q. And then Ms. Marlene Greene is sending an email notifying

—WELCH - DIRECT - MILLER—

1 of a, I believe it was on behalf of Bidpath, an auction for
2 Permian equipment, correct?

3 A. Correct.

4 Q. Permian had been a customer of Sandhills prior to
5 Ms. Greene departing, correct?

6 A. Yes, correct.

7 Q. And so do you have any concern that the information that
8 was transmitted outside of Sandhills' systems was used to
9 otherwise get Permian business?

10 A. Yes, absolutely.

11 MR. FARSIUO: Judge, I'm going to object to that
12 testimony right there. Absolutely no evidence. In fact, as
13 Mr. Miller knows, the evidence is contrary to what the witness
14 just testified to.

15 THE COURT: Okay. You can save that and preserve
16 that for cross-examination.

17 BY MR. MILLER:

18 Q. We've said it repeatedly, but I want to summarize. The
19 attachments about which you've testified in the multiple
20 emails that were sent to Mr. Garafola's personal email address
21 or his wife's, are those attachments confidential and
22 proprietary information?

23 A. Yes.

24 Q. Does Sandhills and Equipmentfacts take measures to
25 protect its confidential and proprietary information,

—WELCH - DIRECT - MILLER—

1 including what was attached to the emails?

2 A. Yes.

3 Q. And what method, what steps are taken?

4 A. That it's all user-protected, user names, passwords.

5 Q. Okay. Anything else?

6 A. No.

7 Q. Well, let me ask you this. Can you access without

8 approval the Equipmentfacts drives and their networks and then

9 any of the information in there?

10 A. No.

11 Q. And what do you have to do to get access to it?

12 A. I have to get approval from our security, cybersecurity

13 team.

14 Q. So, ultimately, the various brands or business divisions

15 have their own protections in place, correct?

16 A. Yes.

17 Q. And the people that are employed there are employed and

18 they're given access credentials?

19 A. Yes.

20 Q. And as employees of Sandhills, it's expected that they're

21 not going to do something that's harmful to any of the

22 Sandhills business?

23 A. Correct.

24 Q. And, ultimately, if Mr. Essay, and if you don't know,

25 wanted to access your files, he couldn't get access to it,

—WELCH - DIRECT - MILLER—

1 could he?

2 A. No.

3 Q. Any of these documents or emails ever get returned to
4 Sandhills?

5 A. No.

6 Q. Do you know whether a request was made?

7 A. Yes, I believe there was a request made.

8 Q. And do you know what the response was?

9 A. That they didn't have it.

10 Q. And every email we just talked about went to
11 Mr. Garafola's personal Gmail account, correct?

12 A. Yes, correct.

13 Q. And you know that how?

14 A. Because his personal Gmail account was also included in
15 the purchase agreement.

16 Q. Did Mr. Garafola give back any of the money you paid him?

17 A. No.

18 Q. Any of the -- and when I say "money," any of the
19 \$1.5 million that was paid for the company?

20 A. No.

21 Q. How about any of the compensation he was paid?

22 A. No.

23 Q. Now, we've seen and you've testified about the concerns
24 you had about the information being transmitted out of
25 Sandhills to Mr. Garafola's Gmail account, that is, it's

—WELCH - DIRECT - MILLER—

1 essentially being able to create Equipmentfacts 2.0, correct?

2 A. Yes, correct.

3 Q. Is Mr. Garafola competing against Sandhills today?

4 A. Yes.

5 Q. And by what entity?

6 A. Facts Technology LLC.

7 Q. How did you become aware of Facts Technology?

8 A. We noticed a former customer of ours, Permian, one of my
9 sales reps brought to my attention that they were now using a
10 new platform, which was OilfieldFacts. And upon further
11 investigation, OilfieldFacts was a brand of Facts Technology
12 LLC.

13 Q. And we're going to get to sort of a side-by-side, but
14 you've now just used relative to Facts Technology the word
15 "brand."

16 A. Yes.

17 Q. Sandhills existed much longer than Facts Technology, at
18 least as it's currently operated, correct?

19 A. Yes, correct.

20 Q. And would you say that the -- is the colloquial use of
21 "brand," is that common throughout the industry or is it
22 unique to Sandhills and now Facts Technology?

23 A. No, it's used throughout.

24 Q. Other than the individual that was employed by Sandhills
25 who saw Permian on Facts Technology's brand, did you learn of

—WELCH - DIRECT - MILLER—

1 any other issues relative to the competition by Facts
2 Technology against Sandhills?

3 A. Shortly thereafter, we started hearing from customers
4 about solicitations from Facts Technology.

5 Q. And do any come to mind specifically?

6 A. Yes, several: J.B. Dimick, Ray Gombiski, Craig Hilpipre,
7 Jeff Martin, McGrew Auctions. Those are just a few.

8 Q. Now, I want to go back to the brand conversation. When
9 you went to go investigate the Permian account or its
10 inventory being auctioned off by Facts Technology, did you
11 actually go visit the website?

12 A. Yes.

13 Q. And when you get to the website, is it a static website
14 or does it enable you to go to different web pages?

15 A. There's different web pages.

16 Q. And relative to the brands, was there a description of
17 what type of business the brands were otherwise promoting on
18 the website?

19 A. Yes.

20 Q. And universally, that is, for every brand that appears,
21 was there something common between them?

22 A. Online auction services.

23 Q. And is that what Sandhills is engaged in?

24 A. Yes.

25 MR. MILLER: Judge, I have a PowerPoint presentation

—WELCH - DIRECT - MILLER—

1 that's otherwise -- it's basically just taking the two
2 websites and doing a comparison. I have a hard copy of it I
3 can present to everyone, and I can put it up there.

4 THE COURT: Counsel, any objection for the record?

5 MR. FARSIUO: I mean, I have a lot of objections. I
6 guess, you know, I haven't seen what this is going to be, but
7 I'll reserve my time, I guess, if it's discussing the new
8 information.

9 THE COURT: Okay.

10 BY MR. MILLER:

11 Q. Now, Mr. Welch, as part of this litigation, did you help
12 prepare a PowerPoint presentation comparing the brands of
13 Facts Technology versus Sandhills?

14 A. Yes.

15 Q. And did you, in creating that, rely on the publicly
16 available information from Facts Technology as well as from
17 Sandhills?

18 A. Yes.

19 Q. And what was the -- and I just said it. But in your own
20 words, what was the point of that exercise?

21 A. To view where they were competing with us.

22 Q. Mr. Welch, what is this representing here?

23 A. This would be like the two parent companies, Sandhills
24 Global and Facts Technology.

25 Q. And the narrative, the description that appears there,

—WELCH - DIRECT - MILLER—

1 that's taken directly from the websites, correct?

2 A. Yes.

3 Q. And, in your opinion, are they different? I mean,
4 obviously, the words are different, but the import of them?

5 A. Sandhills is more broad because of our -- all the
6 different verticals we're in. However, Facts Technology
7 focuses on the online auction services.

8 Q. And again, Sandhills purchased Equipmentfacts, correct?

9 A. Yes.

10 Q. And it was purchasing the business, which was defined as
11 providing online auction services?

12 A. Yes.

13 Q. And then the non -- restrictive covenant relative to the
14 APA, the Asset Purchase Agreement, prohibited Mr. Garafola
15 from engaging in online auction services in industries in
16 which Sandhills operated, correct?

17 A. Correct.

18 Q. And, right here, it's saying, We know the auction
19 industry -- oh, a question here.

20 It references how long Facts Technology has been in
21 existence, correct?

22 A. Yes.

23 Q. Did you become aware of when Facts Technology actually
24 was created?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. And when was that?

2 A. September of 2019.

3 Q. And that's how it currently operates, correct?

4 A. Yes.

5 Q. So that statement, at least with respect to how it
6 currently operates, that's not accurate.

7 A. No. That says it's been in business for decades.

8 Q. Now, I know this is difficult to read. That's why I
9 handed it out.

10 What are we seeing here, Mr. Welch?

11 A. The brands that -- and how they compete with each other.

12 Q. So what's on the left-hand side?

13 A. Sandhills' brands.

14 Q. And those are the various brands, that is, the industries
15 in which Sandhills operates?

16 A. Yes.

17 Q. And what's on the right side?

18 A. Facts Technology's brands.

19 Q. And there are circles on the left side that's Sandhills'
20 brands. Do you see those?

21 A. Yes.

22 Q. And what's that meant to designate?

23 A. The brands that are in direct competition with Facts
24 Technology brands.

25 Q. Now, before, you said, when looking at the websites, you

—WELCH - DIRECT - MILLER—

1 could actually tell by the descriptions provided on the
2 website that each was providing online auction services,
3 correct?

4 A. Yes.

5 Q. Do you see them there?

6 MR. MILLER: And you can look there, for the interns,
7 up there.

8 Q. Just peruse these. And if there is any one that doesn't
9 provide online auction capabilities, let me know.

10 A. No. They all say empowering truck auctioneers with the
11 most advanced online bidding technology and customer support
12 services for each of those industry-specific brands.

13 Q. So every one of those brands is providing online auction
14 services for whatever it is, Stockyard, ControllerFacts,
15 whatever it might be.

16 A. Yes, correct.

17 Q. The top, Mr. Welch, that's part of the restrictive
18 covenant that was executed as part of the Asset Purchase
19 Agreement, correct?

20 A. Correct.

21 Q. And again, those are the words from the document. But
22 what's your understanding, again, what he's restrained from
23 doing for 5 years?

24 A. He's restrained from competing with Sandhills in any way
25 with regards to online auction services.

—WELCH - DIRECT - MILLER—

1 Q. And then the term -- the definition of "business" is
2 defined in the Asset Purchase Agreement?

3 A. Yes.

4 Q. And you see that phrase "related auction industries"?

5 A. Yes.

6 Q. You helped negotiate the agreement, correct?

7 A. Yes, correct.

8 Q. So you know the meaning of the terms that apply, correct?

9 A. Yes.

10 Q. Was the Asset Purchase Agreement definition of "business"
11 limited to just heavy equipment, truck and agriculture?

12 A. Absolutely not.

13 Q. And how do you know that?

14 A. Larry was instrumental in continuing to expand
15 Equipmentfacts into other verticals.

16 Q. And those verticals were Sandhills' brands.

17 A. Yes.

18 Q. What's this slide designating, or at least representing?

19 A. Competing brands of Sandhills and Facts Technology.

20 Q. And, if you could, for the Court's benefit -- and we can
21 go back to the actual descriptions that are contained with
22 each of the brands, for example, Collector Facts (sic). But
23 can you describe for the Court how CollectibleFacts is
24 competing against HiBid?

25 A. HiBid is a -- is our online auction website for

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1 collectibles. And many other things, but collectibles being a
2 main focus of it.

3 Q. So HiBid has collectible inventory that it offers for
4 online auctions?

5 A. Yes, correct.

6 Q. And your understanding, having looked at
7 CollectibleFacts, the description, it otherwise is providing
8 online auction services for collectibles, correct?

9 A. Yes.

10 Q. And would you do the same for a description in terms of
11 the competition for Machinery Trader and MachineFacts?

12 A. Yes. MachineFacts would be the heavy industrial
13 equipment auctions for Facts Technology whereas Machinery
14 Trader is the Sandhills brand for heavy construction
15 equipment.

16 Q. Now, MachineFacts, does that strike you as familiar?

17 A. Yes.

18 Q. Why?

19 A. Larry wanted to, when we acquired Equipmentfacts, expand
20 into the industrial machine works auction space. And there
21 was emails with him actually setting that up while employed at
22 Sandhills.

23 Q. And do you have a recollection whether in fact he uses
24 that very same phrase, "Machinefacts"?

25 A. He uses that very same phrase, "Machinefacts."

—WELCH - DIRECT - MILLER—

1 Q. That's while he was employed by Sandhills, correct?

2 A. Yes, correct.

3 Q. You've referenced before your recollection of
4 Mr. Garafola using the phrase "Machinefacts" in an email.

5 Do you recall that?

6 A. Yes.

7 Q. Is this, that's what's marked as P-18, that email?

8 A. Yes.

9 Q. Now, I'd like, if you can, to walk the Court through this
10 email exchange, starting first with the initial email exchange
11 that starts on page 2, Bates stamp Sandhills PI-517.

12 You don't have to read it in total. Take a minute, look
13 at it, and I want you to describe for the Court what's
14 happening here, who's talking to who.

15 A. Larry is emailing myself and Shawn Peed, the owner of the
16 company, and he states that he was contacted by a head
17 consultant for Barrett-Jackson, Mecum and Vicari Auctions,
18 which those are large collector car auctioneers, and wanted to
19 go about creating CollectorCarFacts in order to get their
20 business.

21 Q. And then, if you go further up, just above on that second
22 page, there's an email to Larry from Shawn that says, "No,
23 need to tie this into Beech B cars portal." What does that
24 mean?

25 A. So we can create brand-specific portals on HiBid, so, for

—WELCH - DIRECT - MILLER—

1 example, collectorcarfacts.hibid.com. It's a really easy way
2 for us to create a portal.

3 Q. And, real quick, it may not be the first time, but HiBid,
4 what's HiBid? Well --

5 A. HiBid --

6 Q. I'm sorry. Keep going.

7 A. HiBid is an online auction platform for pretty much
8 anything that's not directly related to the equipment
9 industries.

10 Q. Got it. And going to the first page down?

11 A. Yes.

12 Q. And there is email exchanges going on between you and
13 various people within Equipmentfacts?

14 A. Yes.

15 Q. And within Sandhills itself?

16 A. Yes, correct.

17 Q. And then, in particular, I'm interested in the email from
18 Larry, Mr. Garafola, dated Tuesday, April 23, 2019, 3:14 p.m.,
19 to you, and the "re" is collectorcarfacts.com.

20 Do you see that email?

21 A. Yes.

22 Q. Can you read that, what Larry sent to you, for the
23 record?

24 A. "CollectorCarFacts is just like Equipmentfacts, nothing
25 different with the exception of it being powered by HiBid

—WELCH - DIRECT - MILLER—

1 rather than BidCaller or Bidpath. The same concept as
2 Machinefacts.com."

3 Q. Now I'm going to go in reverse order from where I started
4 from.

5 Machinefacts.com, April 23, 2019, who employs Larry at
6 that time?

7 A. Sandhills.

8 Q. So, at that point, he's communicating to you he's going
9 to create the Machinefacts.com, and it's otherwise going to
10 provide online auction services for it, or that's what he's
11 anticipating.

12 A. Correct.

13 Q. And then, going back into the beginning of that sentence,
14 what strikes you as interesting, if at all, how Mr. Garafola
15 is describing the interplay between Equipmentfacts and what
16 he's describing?

17 A. He's saying it's no different than Equipmentfacts. The
18 only thing that's different is the engine that's running it.

19 Q. And -- I'm sorry. Keep going.

20 A. HiBid being the engine that's running CollectorCarFacts
21 and Machinefacts versus BidCaller or Bidpath.

22 Q. And we keep hearing the same names coming up, BidCaller
23 and Bidpath. Is that Brindley?

24 A. Bidpath is Brindley, yes.

25 Q. So, basically, he's saying while employed that

—WELCH - DIRECT - MILLER—

1 this either CollectorCarFacts or Machinefacts, a brand, is
2 going to use HiBid, our engine, but you could easily go over
3 to Bidpath, which is just a similar engine but it's run by
4 Mr. Brindley, correct?

5 A. Yes, correct.

6 Q. And it's not too far after, it's maybe a month later, I
7 can get it directly, that Mr. Garafola is having email
8 exchanges with Ms. Greene about starting a business with
9 Mr. Brindley, who is from Bidpath.

10 A. Yes, correct.

11 Q. MachineFacts, when you clicked on it, was it in
12 competition with Machinery Trader?

13 A. Yes.

14 Q. And why?

15 A. Because it offers industrial equipment.

16 Q. For what? For what purpose?

17 A. For auction.

18 Q. Online auctions?

19 A. Yes.

20 Q. Every one of those is online auction provider, correct?

21 A. Every one of his is an online auction.

22 Q. Now, I'm not going to have you necessarily go through
23 each one unless you need to. Generally speaking, Facts
24 Technology brands, each of them provides an online auction
25 service for a particular industry -- collectibles, machine,

—WELCH - DIRECT - MILLER—

1 big rigs, whatever they are. Correct?

2 A. Yes.

3 Q. Each of those online auction services being provided for
4 those brands is in competition with the ones that are noted
5 there for Equipmentfacts -- or Sandhills, correct?

6 A. Yes, correct.

7 Q. And each one of those is a online auction service -- and
8 we'll get to how it happens -- online auction service for that
9 particular industry or brand.

10 A. Yes.

11 Q. You described before the engine, how the thing works.
12 Do you recall that?

13 A. Yes.

14 Q. I want you to educate the Court about how this works --

15 A. Okay.

16 Q. -- the engines, the bodies, how it all works -- and try
17 to make them as apple-is-to-apples comparison. So please,
18 starting first with the Sandhills model, describe for the
19 Court what that is.

20 A. Yeah. Bidpath was the engine of Equipmentfacts at the
21 time of acquisition. They charged a flat fee for every time
22 we had an auction up that utilized that software.

23 When Larry came on board, we used his knowledge to
24 further develop BidCaller, the software, to a point where we
25 felt comfortable enough to ultimately get Bidpath out of there

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1 and no longer have that expense. So in April of 2019,
2 BidCaller replaced Bidpath as the engine that runs
3 Equipmentfacts.

4 Q. And then how does Equipmentfacts otherwise operate with
5 respect to the various brands that are identified?

6 A. Any inventory -- let's take, for example, a bulldozer.
7 If a bulldozer is on the Equipmentfacts platform and being
8 offered at auction, you can go to Machinery Trader, find that
9 dozer, and when you click on it, it will bounce you over to
10 Equipmentfacts, where they can then bid on the item.

11 Q. So would the converse be true? Say, for example, if I
12 went to TractorHouse, I saw it had inventory, available was a
13 tractor. If it was provided for online auction services,
14 simulcast or otherwise, if I clicked on that, would it direct
15 me to Equipmentfacts?

16 A. Yes, that's correct.

17 Q. And is that true for each of the brands? They would
18 otherwise, if online auction services were provided for an
19 inventory, it would go to Equipmentfacts?

20 A. Yes, correct.

21 Q. And BidCaller is simply the software, the engine that
22 allows you to conduct the actual online auctions through
23 Equipmentfacts.

24 A. Yes, correct.

25 Q. Now, go to the other side, Facts Technology. It looks

—WELCH - DIRECT - MILLER—

1 different. Can you describe what it is in terms of what's
2 being presented here?

3 A. So they provide strictly only online auction services
4 whereas our brands also have retail inventory listed.

5 Q. And by that you mean?

6 A. Meaning an item that's being offered for sale that a
7 buyer would then call the seller and negotiate that price.
8 Whereas the Facts Technology brands are strictly online
9 auctions, so all those brands, the auctions take place on
10 those specific brands.

11 Q. So, essentially, if I look at this, then for
12 MachineFacts, it already has built into it an Equipmentfacts
13 to it.

14 A. Yes, it's got an online auctions engine software that's
15 driving it.

16 Q. And so a difference would be, if you clicked on it, it
17 wouldn't refer you out to the engine, it actually was
18 self-contained within that brand?

19 A. Yes, correct.

20 Q. And that's true with CollectibleFacts and all the other
21 ones identified there?

22 A. Yes, correct.

23 Q. Now, you have lined up here BidCaller and
24 AuctioneerFacts.

25 Do you see that?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Can you describe for the Court what the import of that
3 is? Why do you have those there?

4 A. Because AuctioneerFacts is the engine and the software
5 that's running all of his websites whereas BidCaller is the
6 engine and software that's running Equipmentfacts.

7 Q. Now, we've been talking about brands, and you've got
8 HiBid, you've got MachineFacts as sort of inventory.

9 Does Sandhills actually treat as a brand BidCaller?

10 A. That's just what we refer to as the software.

11 Q. Okay.

12 A. Prior to acquisition, that was the brand. But upon
13 acquisition, we made Equipmentfacts the overarching brand and
14 then just developed BidCaller to just be the software.

15 Q. Got you.

16 Based on your having navigated the website that is Facts
17 Technology and the various brands, having seen how, through
18 its description and your understanding of the online auction
19 business, is it your testimony that each of -- Facts
20 Technology is competing against Sandhills in the online
21 auction business for each of the brands identified there?

22 A. Yes.

23 Q. And that was contemplated, that is, a prohibition against
24 that kind of competition was expressly contemplated by the
25 Asset Purchase Agreement and the related non-compete, correct?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Have you, in terms of having reviewed or visited the
3 Facts Technology website, has it changed since when the
4 lawsuit, our lawsuit, started to today?

5 A. Yes.

6 Q. And what's changed?

7 A. Bidderfacts was removed.

8 Q. And that was a brand that would have appeared on the
9 right-hand side?

10 A. Yes.

11 Q. And you don't know why it was removed, correct?

12 A. Don't know why.

13 Q. Was there any change to AuctioneerFacts?

14 A. It used to have the actual auctions on it. It no longer
15 does.

16 Q. If you were to click on AuctioneerFacts, does it bring
17 you to other websites?

18 A. Yeah. It brings you to a almost tutorial.

19 Q. Got you. I've seen, when it's been clicked on, a
20 reference to a thing called Vortex.

21 Are you familiar with that?

22 A. Yes.

23 Q. What's Vortex?

24 A. Prior to us acquiring Equipmentfacts, Equipmentfacts used
25 several different providers. Think of Bidpath. Vortex was

—WELCH - DIRECT - MILLER—

1 one that they used prior to using Bidpath, so it's one that
2 Larry was very familiar with.

3 Q. And do you have information as to whether AuctioneerFacts
4 relies on Vortex as an engine?

5 A. Yes, it does.

6 Q. And Vortex would be competing against BidCaller.

7 A. Yes, correct.

8 Q. And so the combination of AuctioneerFacts and Vortex,
9 those two combined would otherwise be a competition to
10 BidCaller.

11 A. Exactly.

12 Q. In your opinion, based on having negotiated the Asset
13 Purchase Agreement and the restrictive covenants, is that
14 unlawful competition as specific to the agreements?

15 A. Yes.

16 Q. Now, we testified earlier that you learned of the
17 creation of Facts Technology through customers, correct?

18 A. Yes.

19 Q. And you mentioned a couple of names. I didn't hit them
20 at that point, so I'd like to revisit them. So can you start
21 again? To your knowledge, what customers raised specific
22 concerns about solicitations they received?

23 A. J.B. Dimick.

24 Q. And let's stay with Mr. Dimick right there. Who is
25 Mr. Dimick?

—WELCH - DIRECT - MILLER—

- 1 A. He's a customer of ours, of Sandhills.
- 2 Q. And is he remain a customer of Sandhills?
- 3 A. Yes.
- 4 Q. And how did you become aware of Mr. Dimick's issue?
- 5 A. He received an email from Facts Technology and, in turn,
- 6 forwarded that email to one of my sales representatives, Jim
- 7 Ryan, and asked is this a part of Sandhills.
- 8 Q. And that was in an email exchange?
- 9 A. Yes.
- 10 Q. You've been, probably unfortunately for you, very
- 11 involved in this litigation, correct?
- 12 A. Yes.
- 13 Q. Are you familiar with the filings that have occurred?
- 14 A. Yes.
- 15 Q. Are you familiar with the declarations that have been
- 16 submitted?
- 17 A. Yes.
- 18 Q. Did Mr. Dimick submit a declaration?
- 19 A. Yes.
- 20 Q. Did anything in Mr. Dimick's declaration stand out to you
- 21 other than the email that we have just testified to?
- 22 A. That he was confused as to whether it was a part of
- 23 Sandhills or not.
- 24 Q. And why would that be a problem for you?
- 25 A. Because that's -- it's a distraction from our business,

—WELCH - DIRECT - MILLER—

1 my sales reps having to explain no, that it's not a part of
2 Sandhills, rather than being focused on continuing to provide
3 our services. Creates mass confusion in the market.

4 And the other thing that's very concerning is, you know,
5 we heard from J.B. Dimick, but how many out there did we not
6 hear from that also got the same email and came to the same
7 conclusion?

8 Q. And, in addition to that, did Mr. Dimick make the Court
9 and -- or -- and you aware of an issue about how he received
10 the solicitation?

11 A. Yeah. He was curious as to why he got it on the email
12 account that he did, because it was not one that he utilized
13 out publicly and the only people that had it was Sandhills.

14 MR. FARSIUO: Judge, just note my objection to the
15 certifications since I have no opportunity to cross-examine
16 these individuals.

17 MR. MILLER: And I'll represent to the Court this is
18 the declaration that was submitted with Sandhills' papers on
19 November 25, 2019, Docket Number 3-2, Mr. Dimick's
20 declaration.

21 MR. FARSIUO: Just so you note, Mr. Miller, I think
22 this is -- you have a P-19. You have the other one as P-18.
23 I believe it's P-19, P-20, because it was a duplicate.

24 MR. MILLER: Oh. Thank you very much. I appreciate
25 that.

—WELCH - DIRECT - MILLER—

1 THE COURT: One second, Counsel. Let me just take a
2 quick look.

3 Okay. I'm going to allow this to come in.

4 To the extent that there is anything that remains, at
5 the conclusion of this examination, that you believe that you
6 need to call the actual witness for, we'll entertain that at
7 this time. But at this time, I'm overruling the objection.
8 I'm going to allow the declaration to come in.

9 MR. FARSIUO: Okay.

10 BY MR. MILLER:

11 Q. Mr. Welch, you testified to having become aware of the
12 declaration submitted by Mr. Dimick, correct?

13 A. Yes.

14 Q. And is this that declaration?

15 A. Yes.

16 Q. And attached to the declaration is an email, correct?

17 A. Yes.

18 Q. And if you'll turn to it, it's Bates stamp Sandhills
19 PI-438.

20 Are you there?

21 A. Yes.

22 Q. And you testified about confusion or your perception of
23 Mr. Dimick being confused.

24 Do you remember that?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. Can you read the first email that appears on that page?

2 A. J.B. Dimick to Jim Ryan, my sales representative, "Is
3 this part of Sandhills?"

4 Q. And is that why you had the impression that Mr. Dimick
5 was confused?

6 A. Yes.

7 Q. And then, if you go to page 2 of the declaration -- and
8 actually, before you go there, and I don't want you to go into
9 great detail, the attachment, the email that he received, what
10 was it for in terms of what was being advertised?

11 A. AuctioneerFacts, changed the online auction industry by
12 release of AuctioneerFacts.

13 Q. And prior to today, had you reviewed AuctioneerFacts'
14 website?

15 A. Yes.

16 Q. And what's your understanding, based on the publicly
17 available information, as to what AuctioneerFacts does?

18 A. Online auction services for the auction industry.

19 Q. And Mr. Garafola, if you go to that -- or, rather, if you
20 go to Sandhills PI-438, that's an email that's being sent to
21 Mr. Dimick's email address at cascadowood.com, correct?

22 A. Correct.

23 Q. Now, if you go to paragraph, in the declaration itself,
24 paragraph 11, Bates stamp Sandhills PI-435.

25 Are you there?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Did Mr. Dimick express any concern about how he received
3 that solicitation?

4 A. Yes.

5 Q. And without reading it, did you -- independent of that,
6 did you have an understanding that Mr. Dimick had that
7 concern?

8 A. Yes.

9 Q. And what was his concern?

10 A. He had only given that email address to a few individuals
11 with whom he does auction business, including Mr. Ryan.

12 Q. And as a representative of Sandhills, the director of new
13 product sales, do you have concerns about Mr. Dimick having
14 received this solicitation at that email address?

15 A. Absolutely.

16 Q. Why?

17 A. Because the only way that it could have been obtained was
18 through a proprietary information to Sandhills.

19 Q. And do you have a belief that Mr. Garafola took that?

20 A. Yes.

21 Q. We're talking about individuals or customers that raised
22 concerns. We've just spoken about Mr. Dimick.

23 Are there any others?

24 A. Yes.

25 Q. And who else?

—WELCH - DIRECT - MILLER—

- 1 A. Craig Hilpipre.
- 2 Q. And do you know what business Mr. Hilpipre operates?
- 3 A. Hilpipre Auctions.
- 4 Q. Without looking at his -- did he submit a declaration?
- 5 A. Yes.
- 6 Q. Did you review the declaration when it was submitted?
- 7 A. Yes.
- 8 Q. And what was the trigger for Mr. -- well, did
- 9 Mr. Hilpipre complain?
- 10 A. Yes.
- 11 Q. To whom did he complain?
- 12 A. His sales representative, Michaela Wallace.
- 13 Q. A Sandhills Equipmentfacts sales representative?
- 14 A. Yes.
- 15 Q. And without actually looking at that -- and the complaint
- 16 was about what?
- 17 A. About the email solicitation from Facts Technology.
- 18 Q. And without having the benefit of that email solicitation
- 19 in front of you now, did anything stand out to you about his
- 20 issues, that is, Mr. Hilpipre's?
- 21 A. He was angry. He referred to Mr. Garafola as a hyena.
- 22 Q. And did you form any opinion or impression about how it
- 23 was that Mr. Hilpipre was expressing his feelings about that?
- 24 A. That, I mean, he was angry, and it was because of the
- 25 email that was -- that he -- and he knew that it was in

—WELCH - DIRECT - MILLER—

1 competition with Sandhills.

2 Q. And my first read, that could be beneficial to Sandhills,
3 couldn't it, if he's thinking about Mr. Garafola as a hyena?

4 A. It's a huge distraction to my sales representatives.

5 Q. Why?

6 A. They're having to battle in the market this perception of
7 what's going on with Larry Garafola, what's going on with
8 Equipmentfacts, rather than focus on what their job should be,
9 and that's selling Sandhills' products.

10 Q. Did you ever speak to Mr. Hilpipre about his complaint,
11 specifically you and Mr. Hilpipre?

12 A. No.

13 Q. Mr. Welch, is that the declaration that you reviewed that
14 was submitted by Mr. Hilpipre?

15 A. Yes.

16 Q. If you would go to the email, which is Bates stamped
17 Sandhills PI-466.

18 A. Yes.

19 Q. Are you there?

20 A. Yes.

21 Q. Again, this email is one being sent on whose behalf at
22 the bottom?

23 A. AuctioneerFacts.

24 Q. Is it coming from Facts Technology?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. That's Mr. Garafola's company?

2 A. Yes.

3 Q. And Mr. Hilpipre then is forwarding it on -- or at least
4 making someone aware.

5 You see that exchange at the top?

6 A. Yes.

7 Q. Who is Mr. Hilpipre sending it to?

8 A. Michaela Wallace.

9 Q. And is she a Sandhills' employee?

10 A. Yes.

11 Q. Does she cover that account --

12 A. Yes.

13 Q. -- that is Mr. Hilpipre's account?

14 A. Yes.

15 Q. Can you read, for the record, what Mr. Hilpipre is saying
16 to his account representative, Michaela Wallace.

17 A. "In the animal kingdom, he would be considered a hyena,
18 living on carcasses, stealing one bit when he can. If I was
19 Sandhills Publishing, I would have the FBI investigate his
20 company. Craig."

21 Q. Did you have the FBI investigate Mr. Garafola's company?

22 A. No.

23 Q. Now, if we go into the actual declaration itself.

24 Go to paragraph 5. Take a minute and review it. Let me
25 know when you've done so.

—WELCH - DIRECT - MILLER—

1 A. I'm done.

2 Q. And in that paragraph it's reciting what you just said in
3 terms of what was contained in the email, correct?

4 A. Yes.

5 Q. Can you read the first two sentences up to that quote?

6 A. "I only know Mr. Larry Garafola from a business
7 perspective. My last conversation with Mr. Larry Garafola was
8 many years ago. Based on my past business experience with
9 Mr. Larry Garafola, I can't trust him. Furthermore, I
10 expressed my opinion in an email to my Sandhills Publishing
11 account representative."

12 Q. And that's the animal kingdom comment that was made?

13 A. Yes.

14 Q. We have Mr. Dimick, Mr. Hilpipre. Is there anybody else
15 that you recall having raised concerns about solicitations?

16 A. Ray Gombiski.

17 Q. And what business did Mr. Glombiski (sic) work for?

18 A. James G. Murphy Auctions.

19 Q. Are you aware whether Mr. Glombiski submitted a
20 declaration in connection with this matter?

21 A. Yes, he did.

22 Q. Does anything stand out to you -- did you review
23 Mr. Glombiski's declaration and the email solicitation?

24 A. Yes.

25 Q. Anything in particular, excuse me, stand out to you?

—WELCH - DIRECT - MILLER—

1 A. Just, again, the confusion. Why am I getting contacted?

2 Q. Mr. Welch, is that Mr. Gombiski's -- I'm sorry. I'm

3 saying Glombiski. G-O-M-B-I-S-K-I.

4 Is that Mr. Gombiski's declaration?

5 A. Yes.

6 Q. If you would, go down to paragraph 6.

7 Are you there?

8 A. Yes.

9 Q. Would you read, for the record, what Mr. Gombiski
10 submitted in his declaration at paragraph 6?

11 A. "As soon as I read the beginning of the email, I knew
12 something was wrong because Facts Technology" --

13 Q. Could you slow down --

14 A. Sorry, yup.

15 Q. -- for the court reporter.

16 A. "As soon as I read the beginning of the email, I knew
17 that something was wrong because Facts Technology was clearly
18 competing against Sandhills and Equipmentfacts. I immediately
19 thought to myself that there had to be some kind of agreement
20 in place that would prevent Mr. Garafola from competing with
21 Sandhills because it purchased equipmentfacts.com from him."

22 Q. Keep going.

23 A. "In my opinion, there was a clear conflict of interest in
24 what Mr. Garafola was doing by competing against Sandhills."

25 Q. And if you go to the second page, go to paragraph 9.

—WELCH - DIRECT - MILLER—

1 Can you read out loud what Mr. Gombiski says in paragraph
2 9?

3 A. "I have never spoken to or communicated with Mr. Garafola
4 or anyone associated with him. I never provided my company's
5 contact information to Mr. Garafola or anyone associated with
6 him and neither did Mr. Murphy, to my knowledge."

7 Q. Is the fact that Mr. Gombiski is representing in the
8 sworn declaration that he didn't provide the contact
9 information yet he received a solicitation, is that concerning
10 to you?

11 A. Yes.

12 Q. And why is that concerning?

13 A. Because he probably got it from the intellectual property
14 that he took from Sandhills.

15 Q. Is there anybody else -- any other customer, a Sandhills'
16 customer, that you were made aware of that received a
17 solicitation?

18 A. Jeff Martin.

19 Q. And who is Mr. Martin?

20 A. He's the owner of Jeff Martin Auctioneers.

21 Q. And how is it you became aware of Mr. Martin's issue?

22 A. He called me directly.

23 Q. And as best you can recall, what did Mr. Martin say to
24 you and what did you say in response?

25 A. "Things didn't end well with Larry, did they?"

—WELCH - DIRECT - MILLER—

- 1 Q. And that was Mr. Martin to you?
- 2 A. Yes.
- 3 Q. And how did you respond?
- 4 A. "Not exactly. How did you know?"
- 5 Q. And what did Mr. Martin respond in that response?
- 6 A. That he had been solicited by Facts Technology.
- 7 Q. And was it personally by Mr. Garafola?
- 8 A. Yes.
- 9 Q. Now, did you enjoy having that conversation?
- 10 A. No.
- 11 Q. Why?
- 12 A. It's embarrassing.
- 13 Q. In what respect?
- 14 A. It's -- he's wondering what happened between you guys,
- 15 wanting to know the story. And just -- he had probably heard
- 16 one side of the story already.
- 17 Q. It's almost having to deal with someone airing out the
- 18 dirty laundry?
- 19 A. Yes, exactly.
- 20 Q. Did you secure any new auction business during that call?
- 21 A. No.
- 22 Q. Are your calls with Mr. -- what was his name again?
- 23 A. Jeff Martin.
- 24 Q. "Mr. Martin" -- are those generally an attempt to get new
- 25 business?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Here, you weren't doing that, correct?

3 A. No.

4 Q. You were having to answer a question that you should
5 never have to answer?

6 A. Yes, correct.

7 MR. FARSIUO: Judge, please, just note my objection
8 here. We have no certification, and he's talking about
9 thirdhand -- he's talking about a conversation he had with
10 someone who's never going to be on the stand to testify as to
11 whether or not that's accurate, so just note my continuing
12 objection.

13 THE COURT: This is a hearsay objection?

14 MR. FARSIUO: Yes. Absolutely.

15 MR. MILLER: Judge, if I may respond. It's not being
16 asserted for the truth of the matter asserted. It's what
17 did -- how did it impact the state of mind of Mr. Welch when
18 he heard it. What did I have to do? How did I feel? It's --

19 THE COURT: Counsel, we're not getting into this.

20 I understand your objection is continuing.

21 Again, to the extent that there is anything at the
22 conclusion of his testimony that you want to make an
23 application to have these witnesses come in live, you can make
24 that application, but I'm going to allow the testimony at this
25 time.

—WELCH - DIRECT - MILLER—

1 Please proceed, Mr. Miller.

2 MR. MILLER: Thank you.

3 BY MR. MILLER:

4 Q. So we have Mr. Dimick, Mr. Gombiski, Craig Hilpipre.

5 Who's the gentleman you just described?

6 A. Jeff Martin.

7 Q. Jeff Martin. Anybody else that comes to mind?

8 A. A representative from McGrew Auctions.

9 Q. And how did you become aware of that issue?

10 A. An email was sent to one of my sales representatives.

11 Q. Mr. Welch, is that the email you were referring to in
12 your testimony just a minute ago?

13 A. Yes.

14 Q. And going down to the bottom of the first page, do you
15 see that email exchange that's dated November 20, 2019,
16 9:48 a.m.?

17 A. Yes.

18 Q. Who's sending that email?

19 A. Larry Garafola, larry@factstech.com.

20 Q. So Mr. Garafola on behalf of factstechnology.com?

21 A. Yes, correct.

22 Q. And what is he doing in that email with respect to -- or
23 at least as you can read from it?

24 What are these communications between Mr. Garafola and
25 Mr. -- is it Mr. Knisley?

—WELCH - DIRECT - MILLER—

1 A. Yes. He's soliciting Mr. Knisley's business.

2 Q. And if you go on to the second page, is he doing more
3 than just a verbal solicitation? In particular, look at the
4 last paragraph.

5 A. Yes. He's imploring him to go to the website and learn
6 more about it with a live demonstration.

7 Q. So let's read that last paragraph out loud, for the
8 record, beginning with "my staff."

9 A. "My staff already built a system for you, click on the
10 logo below to see your public online website. If you have any
11 further interest or would like a live demo of the
12 administrative side of our system, let me know, and I will be
13 more than happy to help with this -- more than happy to set
14 this up."

15 Q. And then, if you go on to the next page, the next two
16 pages of that email, is that the live demonstration that's
17 otherwise being advertised by Mr. Garafola?

18 A. Yes.

19 Q. And it actually looks like -- it's got McGrew's logo
20 already on it?

21 A. Yes.

22 Q. It's got -- it looks like there's equipment on there?

23 A. Yes.

24 Q. And do you know whether McGrew has -- is McGrew a current
25 customer of Sandhills?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Have they done any business with Facts Technology, to
3 your knowledge?

4 A. Not to my knowledge.

5 Q. Other than Mr. Dimick, Gombiski, McGrew, Hilpipre, and
6 Martin, anybody else come to mind that received the
7 solicitation from Facts Technology and Mr. Garafola?

8 A. Not that I've seen personally but have heard of several
9 more from my sales representatives.

10 Q. Mr. Welch, at some point in time -- and actually, you
11 heard the judge mention it in his recitation of the history of
12 this case, a TRO was entered, correct?

13 A. Yes.

14 Q. And I'll represent that the TRO was entered on
15 December 16, 2019.

16 Does that sound about right?

17 A. That sounds right.

18 Q. Did you have a chance, when Judge Shipp issued his TRO or
19 his letter opinion and order, to actually review the opinion
20 and order?

21 A. Yes.

22 Q. In that opinion and order, did the judge actually explain
23 what was prohibited by the TRO?

24 A. Yes.

25 MR. MILLER: Judge, I don't know if you want me to

—WELCH - DIRECT - MILLER—

1 mark this as an exhibit or just refer to it as a docket entry.

2 THE COURT: You can just refer to it, Counsel.

3 MR. MILLER: This is Docket Entry 23 filed on
4 December 16, 2019.

5 BY MR. MILLER:

6 Q. Mr. Welch, is that the letter opinion and order about
7 which you were just testifying?

8 A. Yes.

9 Q. And if you would, go to page 9 of that document.

10 A. Okay.

11 Q. I'm going to go in reverse order.

12 Go to paragraph 3 of that. Can you read that out loud,
13 for the record.

14 A. "Lawrence Garafola shall immediately return Sandhills'
15 and Equipmentfacts' intellectual property, as defined in the
16 Employee Restrictive Covenant, including, but not limited to
17 customer lists and contact lists, bidder lists and contact
18 lists, and auctioneer lists and contact lists."

19 Q. Mr. Welch, you testified a lot about all the intellectual
20 property that was sent out through his Gmail account, correct?

21 A. Yes, correct.

22 Q. Any of this come back to Sandhills as a result of that
23 order?

24 A. No.

25 Q. You haven't received anything?

—WELCH - DIRECT - MILLER—

1 A. No.

2 Q. Now going to paragraph 2, can you read slowly, so the
3 court reporter gets all of it, and I know the judge knows this
4 and the parties know it well, but, for the record, can you
5 read paragraph 2 in terms of what restraints are in place
6 right now or as of December 16th and continuous?

7 A. "Pending a preliminary injunction hearing, Lawrence
8 Garafola shall be temporarily restrained from directly or
9 indirectly competing with Equipmentfacts's business, as
10 defined in the Asset Purchase Agreement, directly or
11 indirectly soliciting for himself or another business that is
12 competitive with Equipmentfacts's business from any customers,
13 clients or accounts of Equipmentfacts's business, directly or
14 indirectly interfering with any customer, client or account of
15 Equipmentfacts to serve (sic) or alter the relationship of the
16 customer, client or account."

17 Q. And that -- does that mirror, in sum and substance, what
18 is contained in the APA non-compete as well as the employee
19 non-compete, non-solicitation?

20 A. Yes.

21 Q. Are you aware of from December 16th to today whether
22 Mr. Garafola, in your opinion, has violated that TRO?

23 A. Yes.

24 Q. What specifically do you have knowledge of?

25 A. He emailed a customer of Equipmentfacts and Sandhills.

—WELCH - DIRECT - MILLER—

1 Q. And what customer is that?

2 A. Durable Undercarriage.

3 Q. And did we make the Court aware of that issue, are you
4 familiar?

5 A. Yes.

6 Q. And how did you become aware of the email?

7 A. In our review of continuing to keep an eye on any emails
8 that came in from Marlene's personal Gmail account, as well as
9 Larry's personal Gmail account, we monitored any emails coming
10 from those email addresses into our servers. As a result of
11 that monitoring, we saw the email to Durable Undercarriage.

12 Q. Now, in terms of the monitoring that was going on, was it
13 specific to Mr. Garafola's personal email account or did it
14 otherwise touch on other email accounts?

15 A. It touched on any of the personal email accounts
16 associated with Larry Garafola, Marlene, and Maureen; Larry's
17 wife.

18 Q. And then going forward, post-TRO, you became aware of an
19 email from Mr. Enos, correct, that is Durable Undercarriage?

20 A. An email to Mr. Enos, yes, correct.

21 Q. And that was from -- that email was sent -- or at least
22 you became aware of it because it came into Durable
23 Undercarriage's email account, correct?

24 A. Yes, correct.

25 Q. And does Sandhills provide a service to its customers

—WELCH - DIRECT - MILLER—

1 relative to email hosting?

2 A. Yes, we host email for lots of customers.

3 Q. And what services do you provide in that respect?

4 A. We do -- we cybermonitor so any spam -- we have spam
5 filters in place, any cyberattacks that we need to monitor, we
6 monitor that on their email. And as a result, if there's a
7 TRO in place or something where we think that something's
8 going against the law, then we monitor that as well.

9 Q. So you added, in terms of your monitoring functionality,
10 if emails were coming into customers from Mr. Garafola?

11 A. Yes.

12 Q. Because ultimately, the TRO specifically said
13 Mr. Garafola cannot solicit Sandhills' customers?

14 A. Yes, correct.

15 Q. And that's how you became aware of this email, correct?

16 A. Yes, correct.

17 Q. Did you have a chance, after we submitted to the Court --
18 were you aware that Mr. Garafola's attorney submitted an
19 objection to our raising the issue about the Durable
20 Undercarriage email?

21 A. Yes.

22 Q. And one of those -- and in my paraphrase it will abide
23 what the document says -- that he had concerns that it was
24 coming from Mr. Garafola's personal email account.

25 Did you read that?

—WELCH - DIRECT - MILLER—

1 A. Yeah.

2 Q. Does the email that we're talking about -- and I'll bring
3 it up to you so that you can see it -- did that deal with
4 Mr. Garafola's personal email account?

5 A. Yeah, it was signed as Larry.

6 Q. Well, when I say "personal," I should be clear. I
7 apologize.

8 His Gmail account or his Facts Technology account?

9 A. His Facts Technology account.

10 Q. That's my fault. I apologize.

11 Now, Mr. Welch, before we get to the email as part of the
12 business relationship you had with Mr. Garafola and
13 Equipmentfacts, did you become familiar with his family
14 members?

15 A. Yes.

16 Q. Did you happen to, in person, meet all of them?

17 A. Not all of them, no.

18 Q. Do you recognize any of the individuals that are sitting
19 in the gallery today?

20 A. Yes.

21 Q. Who do you recognize?

22 A. Larry Garafola Jr.

23 Q. Anybody else?

24 A. No.

25 Q. Let's focus on the email now.

—WELCH - DIRECT - MILLER—

1 Start at the second page, Sandhills PI-431. It's the
2 email that's sent on January 18, 2020.

3 Do you see that?

4 A. Yes.

5 Q. Just while it may be academic, at this time, the TRO is
6 in place, correct?

7 A. Yes, correct.

8 Q. And, just real quick, if you can pull that -- the letter
9 opinion and order, it was the ninth page.

10 Are you there?

11 A. Yes.

12 Q. Going to paragraph 2.

13 A. Yes.

14 Q. Read section B out loud, please.

15 A. "Directly or indirectly soliciting for himself or another
16 business that is competitive with Equipmentfacts's business
17 from any customers, clients or accounts of Equipmentfacts's
18 business."

19 Q. Keep that framed. We're going to come back to it.

20 Now, this email exchange that's occurring on January 18,
21 2020, after the TRO is in place that includes subpart B,
22 what's happening? What's being discussed in this email
23 exchange between Mr. Garafola and Mr. Enos?

24 A. Larry is soliciting online auction services on behalf of
25 his two sons.

—WELCH - DIRECT - MILLER—

1 Q. And is there a focus that his sons are otherwise engaging
2 for purposes of the online auction business?

3 A. Timed auctions.

4 Q. And I recall you testifying earlier that Sandhills,
5 through its brands, engages in timed auctions, right?

6 A. Yes. Equipmentfacts did timed auctions prior to
7 acquisition. Upon acquisition, we separated timed auctions
8 out as AuctionTime and Equipmentfacts focused on the
9 simultaneous auction.

10 Q. AuctionTime is an affiliate -- or one of Sandhills'
11 affiliates, correct?

12 A. Yes, correct.

13 Q. That's contemplated by the Restrictive Covenant
14 Agreement, correct?

15 A. Yes, correct.

16 Q. Now, how is it -- in the email you were just talking
17 about, how is Mr. Garafola describing his then relationship
18 with Sandhills?

19 A. That he is no longer involved with Sandhills.

20 Q. Does he say anything else?

21 A. Just did not work out how I expected and the company has
22 really changed and the culture did not fit.

23 Q. Okay. And from your reading of this -- I know you said
24 it before, but what exactly is Mr. Garafola trying to do on
25 behalf of his sons?

—WELCH - DIRECT - MILLER—

1 A. He's trying to get inventory to sell through his online
2 auction -- or his sons' online auction.

3 Q. Would you view that, just that phrase right there, as you
4 understand the words that are written, that that's directly or
5 indirectly soliciting for another business that is competitive
6 with Equipmentfacts's business from any customers of
7 Equipmentfacts?

8 A. Yes, absolutely.

9 Q. And let's just make sure.

10 As of the date of this email, January 18, 2020, Durable
11 Undercarriage was a customer of Sandhills, correct?

12 A. Yes.

13 Q. And at that time Mr. Garafola's soliciting a Sandhills'
14 customer on behalf of his sons, correct?

15 A. Yes, correct.

16 Q. And his sons are engaged in Timed Auction, correct?

17 A. Yes, correct.

18 Q. And that's a business that's competitive to Sandhills'
19 AuctionTime, correct?

20 A. Yes, correct.

21 Q. Now, go to the first page of that email.

22 By virtue -- I won't say "by virtue." Mr. Enos responds
23 to Mr. Garafola's email.

24 Do you see that?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. What's your sense -- when you read this, does it give to
2 you an impression of how Mr. Enos is appreciating the
3 relationship, or lack thereof, that Mr. Garafola had with
4 Facts Technology -- with Equipmentfacts?

5 A. Yes.

6 Q. What's your impression?

7 A. He states that he's sorry that -- he's sorry to see you
8 sold Equipmentfacts but I hoped it worked out for you
9 financially.

10 Q. And does Mr. Garafola respond to that comment in a
11 subsequent email?

12 A. Yes.

13 Q. And how does he respond?

14 A. Financially it was good but if I could do it again, I
15 would have never sold.

16 Q. So when you received notification of this email being
17 sent after the TRO, did it give you concern?

18 A. Yes.

19 Q. What about it?

20 A. It made me wonder if he was ever going to stop.

21 Q. Now, it may seem like mental gymnastics but I have a very
22 simple question.

23 Does the entity Facts Technology have knowledge of the
24 customers that were being solicited by Mr. Garafola?

25 A. Yes, absolutely.

—WELCH - DIRECT - MILLER—

1 Q. How?

2 A. Facts Technology is Larry Garafola.

3 Q. Give me some details around that. Why do you say that?

4 A. You could not create Facts Technology without the
5 knowledge and the intellectual property that was taken from
6 Sandhills and the knowledge that Larry Garafola has.

7 Q. And relative to Facts Technology's knowledge of the
8 agreements Mr. Garafola entered into, is it your belief that
9 Facts Technology knows of those agreements?

10 A. Yes.

11 Q. Do you believe that they know the restrictions that are
12 in place?

13 A. Yes.

14 Q. Do you know that -- or do you believe that Facts
15 Technology is aware of the customers to which -- or for which
16 Mr. Garafola is not permitted to solicit?

17 A. Yes.

18 Q. And you described Mr. -- Jeff Martin, and others, but
19 Jeff Martin. He received a call directly from Mr. Garafola,
20 correct?

21 A. Call or email, I'm not sure.

22 Q. And it was on behalf of Facts Technology?

23 A. Yes.

24 Q. So Mr. Garafola was and is Facts Technology?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 THE COURT: Counsel, it's 1:02. We're going to take
2 a half an hour for lunch.

3 Why don't we go ahead and break here, and we will
4 resume about 1:35-ish and proceed at that time.

5 MR. MILLER: Thank you, Judge.

6 THE DEPUTY COURT CLERK: All rise.

7 (Luncheon recess is taken at 1:02 p.m.)

8 THE DEPUTY COURT CLERK: All rise.

9 (Open court begins at 1:37 p.m.)

10 THE COURT: Please be seated. We are back on the
11 record.

12 Mr. Miller, we are continuing with your examination.

13 MR. MILLER: Thank you, Judge.

14 BY MR. MILLER:

15 Q. Mr. Welch, if you could refer back to the declaration of
16 Craig Hilpipre. I believe it's designated as 21.

17 Let me know when you're there?

18 A. I've got it.

19 Q. If you go into the email that is attached as an exhibit
20 to that declaration. Starting at Bates stamp Sandhills
21 PI-446.

22 Let me know when you're there?

23 A. I'm there.

24 Q. That's the email from Facts Technology to Mr. Hilpipre,
25 correct?

—WELCH - DIRECT - MILLER—

1 A. Yes.

2 Q. Can you read what is being presented in that solicitation
3 beginning from where it says AuctioneerFacts and beneath that?

4 A. "Larry Garafola, CEO of Facts Technology and the founder
5 of Equipmentfacts has set out to change the online auction
6 industry by the release of AuctioneerFacts."

7 Q. So, do you have any reason to understand why
8 Mr. Garafola -- and this is you as a reviewer of the email --
9 is otherwise referring to Equipmentfacts in his solicitation
10 of a Sandhills' customer?

11 A. No. It would cause confusion for me as well.

12 Q. Now, Mr. Welch, you said you negotiated with Mr. Garafola
13 in terms of the purchase of Equipmentfacts, correct?

14 A. Yes.

15 Q. And he successfully up bid you in terms of the purchase
16 price?

17 A. Yes.

18 Q. And in your experience with Mr. Garafola as an employee
19 of Equipmentfacts, did you form any opinions as to
20 Mr. Garafola in terms of his business acumen, his desire to
21 earn money, or any of those indicia?

22 A. Yes, he was very money-motivated.

23 Q. Fast forward to Facts Technology. Have you seen any of
24 the advertisements or communications to the public from Facts
25 Technology that describes how at least some of its brands are

—WELCH - DIRECT - MILLER—

1 going to price out the market?

2 A. Yes.

3 Q. And speaking of, in particular, AuctioneerFacts, did it
4 have some -- a communication that it was offering up its
5 service for a one-time fee?

6 A. Yes.

7 Q. And that there weren't going to be commissions paid in
8 terms of that?

9 A. Correct.

10 Q. Do you think Mr. Garafola was going to be receiving
11 compensation as a result of those potential one-time fees?

12 A. Yes.

13 Q. Were you aware that Mr. Garafola submitted in this case a
14 letter, an objection to a request to extend the TRO that said,
15 words to the effect, that if the TRO is in place as is or
16 expanded then Mr. Garafola will not be able to continue
17 earning a living.

18 Are you aware of that?

19 A. Yes.

20 Q. Does that give to you any belief as to whether
21 Mr. Garafola has business other than Facts Technology?

22 A. Yeah, he probably doesn't. This is the way he would make
23 a living.

24 Q. We've talked about solicitations. We've talked about
25 competition. Has Sandhills actually lost customer

—WELCH - DIRECT - MILLER—

1 relationships?

2 A. Yes.

3 Q. Can you tell the Court what relationships you've lost?

4 A. Permian being one. Superior Auctions being another.

5 Q. Permian, in a rolling 12-year lookback -- or 12-month

6 lookback, what was Sandhills' gross revenues from that

7 account?

8 A. Approximately, a little more than \$147,000.

9 Q. Permian's no longer an account with Sandhills, correct?

10 A. Correct.

11 Q. And Permian is an account with Facts Technology, correct?

12 A. Yes.

13 Q. Superior was a Sandhills' customer?

14 A. Yes.

15 Q. And did Superior leave Sandhills?

16 A. Yes.

17 Q. Did they open up an account or relationship with Facts

18 Technology?

19 A. Yes.

20 Q. Does Sandhills have any of that relationship, that is,

21 the Superior relationship today?

22 A. No.

23 Q. Same analysis, 12-month lookback in terms of gross

24 revenue for Superior, how much was that?

25 A. A little over \$136,000.

—WELCH - DIRECT - MILLER—

1 Q. In your experience, doing those historic lookbacks,
2 year-over-year, was the revenue, gross revenue, about the same
3 for those accounts?

4 A. Looking at it, that was the time that they were in
5 business, was pretty much the one year.

6 Q. Fair point. And, you know, let's talk about that.

7 Were you aware of Mr. Enos, in terms of Permian, having
8 submitted a declaration in this case?

9 A. Mr. Dyess?

10 Q. I mean, Dyess, rather. Yes.

11 A. Yes.

12 Q. And Mr. Dyess is the owner of Permian?

13 A. Yes.

14 Q. And Mr. Dyess took issue with certain statements in your
15 declaration about the length or the duration of the
16 relationship you had?

17 A. Yes.

18 Q. Do you recall that?

19 A. Yes.

20 Q. Do you have a recollection of what Mr. Dyess said?

21 A. That he didn't view the term as a lengthy relationship.

22 Q. And do you disagree with that?

23 A. Yes.

24 Q. Why?

25 A. They have only been in a business for about 18 months and

—WELCH - DIRECT - MILLER—

1 they started with us, so it was the life of the business.

2 Q. So you had a relationship since that company existed?

3 A. Yes.

4 Q. From its birth to whatever stage it is right now?

5 A. Yes.

6 Q. Do you have a recollection of Mr. Dyess having put in his
7 declaration that he did not -- or rather Mr. Garafola did not
8 solicit Permian's business?

9 A. Yes.

10 Q. Does that matter to you?

11 A. No.

12 Q. Why not?

13 A. Because according to the Purchase Agreement and the
14 covenants in that, he's not to do business with any of
15 Sandhills' or Equipmentfacts' customers.

16 Q. And is that related to the Purchase Agreement or the
17 employee non-solicitation?

18 A. The employee non-solicitation.

19 Q. Doing business with?

20 A. Yes.

21 Q. His declaration concedes that there is a business
22 relationship between Permian and Facts Technology, correct?

23 A. Yes.

24 Q. That's doing business "with," in your estimation?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. Now, other than the monetary loss, which is significant,
2 it's about what, over \$300,000 lost gross revenue?

3 A. Close to 300,000, yes.

4 Q. Non-monetary harm that you suffered, let's stay specific
5 to Permian and Superior. Have you lost anything other than
6 the revenue that was generated from those accounts?

7 A. It's hard to know what all we lost.

8 Q. And why is that?

9 A. A lot of our business comes from word of mouth, so the
10 fact that they're no longer doing business with us and we
11 can't use that to leverage with other relationships and
12 potentially build upon, that's concerning.

13 Q. And tell me this -- stay first with Permian.

14 Was that an account in existence at the time that
15 Sandhills acquired Equipmentfacts?

16 A. No.

17 Q. So that became an account after Equipmentfacts was
18 purchased?

19 A. Yes.

20 Q. And that was as -- in connection with Mr. Garafola's
21 employment with Equipmentfacts and Sandhills, correct?

22 A. Yes.

23 Q. What about Superior, was it an existing client at the
24 time of the purchase?

25 A. No.

—WELCH - DIRECT - MILLER—

1 Q. Did it come with Equipmentfacts?

2 A. Yes.

3 Q. And you paid some amount -- amounting in total to
4 \$1.5 million for that relationship?

5 A. Yes.

6 Q. And you've now lost that relationship?

7 A. Yes.

8 Q. Let's talk about -- you said you lost potential referral
9 sources from losing Superior and Permian, correct?

10 A. Yes.

11 Q. You've testified about customers that have made
12 complaints or raised issues about the solicitations they
13 received, correct?

14 A. Yes.

15 Q. Non-monetarily, in your opinion as a person that's
16 operating the online auction business for Sandhills, have you
17 lost anything as a result of those solicitations and the
18 conversations you and your sales staff had to have with those
19 customers?

20 A. It has harmed the reputation.

21 Q. In what respect?

22 A. People are wondering what's going on. Some people are
23 wondering whether it's a part of Sandhills. Some people are
24 wondering what happened between you and Superior. I mean,
25 there's all kinds of things that are going on.

—WELCH - DIRECT - MILLER—

1 Q. And as part of the acquisition of Equipmentfacts, it's
2 specifically referred to in the documents a phrase called
3 "goodwill." Are you familiar with that term?

4 A. Yes.

5 Q. Now, the longstanding relationships that Equipmentfacts
6 and Mr. Garafola had otherwise created at Equipmentfacts, you
7 were buying that relationship, correct?

8 A. Yes, correct.

9 Q. And in the contemplation of the purchase and the
10 relationships you were getting with Equipmentfacts, did
11 Equipmentfacts have a reputation in the industry?

12 A. Yes.

13 Q. And what kind of reputation did it have?

14 A. They had a reputation as a pioneer in the online auction
15 business.

16 Q. And had there been a negative connotation to it, would
17 you have consummated the deal? That is negative connotation
18 to Equipmentfacts' reputation, would you have gone forward
19 with the deal?

20 A. No.

21 Q. So you bought what was an existing -- a positive
22 relationship that now got switched on you by virtue of the
23 solicitations that Facts Technology is creating a conversation
24 with your customer, "what's going on"?

25 A. Yes.

—WELCH - DIRECT - MILLER—

1 Q. And as I think you testified before, as opposed to
2 getting new business in those discussions, you're having to
3 try to retain that business?

4 A. Yes.

5 Q. Explain what happened to you guys at the split up?

6 A. Yes, correct.

7 Q. My words, but you agreed, that it was having to do with
8 the aired laundry?

9 A. Correct.

10 Q. Now, it's evident now, by your recall, by the information
11 you'll be able to give, you've been involved with this
12 litigation for a while, correct?

13 A. Correct.

14 Q. Acquisitions, you have been involved with approximately
15 how many? Business acquisitions?

16 A. About six.

17 Q. Is this litigation impacting your view as to how you're
18 approaching potential business acquisitions in the future?

19 A. Yes.

20 Q. How?

21 A. I'm concerned that we could be in the same situation
22 again.

23 Q. And what -- in that regard, what are you looking for?
24 Why are we here today?

25 A. I just want Larry to abide by the covenants of the

—WELCH - CROSS - FARSIU—

1 agreement. And if those can't be enforced, then it makes me
2 question on going forward with future acquisitions.

3 Q. And you paid good money for those assurances, those
4 covenants, correct?

5 A. Yes.

6 MR. MILLER: Judge, I have no further questions.

7 THE COURT: Mr. Farsiou.

8 MR. FARSIU: Just give me one second, Judge.

9 CROSS-EXAMINATION BY MR. FARSIU:

10 Q. Mr. Welch, good afternoon. We've never met before,
11 correct?

12 A. Correct.

13 Q. Now, you said you've been employed with Sandhills since
14 2005?

15 A. Yes.

16 Q. Do you have a law degree?

17 A. No.

18 Q. You're not a lawyer, right?

19 A. No.

20 Q. Now, who's sitting to the right of Mr. Miller?

21 A. Sandhills' in-house counsel.

22 Q. He's a lawyer, right?

23 A. Yes.

24 Q. But the negotiation of the contract, the language
25 negotiations, everything that had to do with the Asset

—WELCH - CROSS - FARSIU—

1 Purchase Agreement, the Employment Agreement, and the various
2 non-restrictive covenants that we talked about, you
3 negotiated, correct?

4 A. That's not correct.

5 Q. That was your testimony earlier, wasn't it?

6 A. I was part of the negotiations, but there was also
7 attorneys involved.

8 Q. Okay. So were you the person who specifically negotiated
9 the monetary amount?

10 A. Yes.

11 Q. Okay. So Mr. Essay had nothing to do with that?

12 A. No.

13 Q. Okay. Now, with respect to what you just testified,
14 because this is what we're really here for, a preliminary
15 injunction that details what type of losses that you have,
16 damages.

17 Now, I just want to make sure that I'm correct. You have
18 testified that Permian is a customer that you lost, correct?

19 A. Yes.

20 Q. And you believe that you directly lost Permian because of
21 Mr. Garafola, correct?

22 A. Yes.

23 Q. And by the way, you testified that you saw Mr. Dyess's
24 certification in this case, right?

25 A. Yes.

—WELCH - CROSS - FARSI—

1 Q. Okay. He didn't -- do you know what technology he uses
2 for his company?

3 A. If you got a copy of the document with that, I'd like to
4 see the headings --

5 Q. It's not in the document. If I told you that he uses
6 ProxiBid, would that surprise you?

7 A. No.

8 Q. ProxiBid is a direct competitor of Sandhills; isn't that
9 right?

10 A. Yes.

11 Q. In fact, there's not a very good relationship there, is
12 there?

13 A. With ProxiBid?

14 Q. Correct?

15 A. No, it's fine.

16 Q. That's your testimony?

17 A. Yes.

18 Q. Okay. So, with respect to Permian, you lost that client,
19 and I believe you said that you believe it would be around
20 \$147,000. Is that what you're saying?

21 A. Yes.

22 Q. And Superior -- is it Superior Options?

23 A. Auctions.

24 Q. I thought it was Options. Auctions. Okay.

25 You're claiming that you lost their business; is that

—WELCH - CROSS - FARSIU—

1 right?

2 A. Yes.

3 Q. And you believe that Superior is doing business with
4 Mr. Garafola?

5 A. At one time, yes.

6 Q. They're not doing business with Mr. Garafola currently,
7 are they?

8 A. I'm not sure on that.

9 Q. Okay. And again, you said that you lost \$136,000; is
10 that correct?

11 A. Yes.

12 Q. Those are monetary damages, right?

13 A. Yes.

14 Q. You're not claiming that in this preliminary injunction,
15 are you?

16 A. This preliminary injunction is about the covenants and
17 the TRO.

18 Q. Well, the preliminary injunction's about what irreparable
19 harm Sandhills has suffered. And one thing that they don't
20 look at is monetary damages. That's something that you can
21 recoup in a lawsuit, are you aware of that?

22 A. Yes.

23 Q. So, can you tell me -- just so I'm clear and so the judge
24 is clear, the monetary amounts that you just brought up, you
25 would agree with me, they would not pertain to a preliminary

—WELCH - CROSS - FARSI—

1 injunction, right?

2 A. No, I think they pertain to a preliminary injunction.

3 Q. Why is that?

4 A. Because it shows what he's -- how he's damaged our
5 company.

6 Q. Monetarily, correct?

7 A. And why he shouldn't be contacting our customers.

8 Q. Monetarily, correct?

9 A. Yes, monetarily.

10 Q. Okay. So, with respect to what you said your irreparable
11 harm is, you said "hard to know," right?

12 A. Yup.

13 Q. Okay. As you sit here today, on February 6th of 2020,
14 you have no idea, no hard concrete evidence as to what
15 non-monetary damages Sandhills has; isn't that correct?

16 A. Well, I do have -- I saw our whole bidder list go out the
17 door with Mr. Garafola. That's the lifeblood of our company.

18 Q. It's interesting that you brought that up. I obviously
19 didn't see those documents until last night, so I'm not going
20 to ask you questions about that because I'm going to reserve
21 on it.

22 But my question to you is and without -- and I don't
23 think I'm waiving this Judge, he just asked the question about
24 the grid, can I ask him a question about it?

25 Those -- I think you said manuals, right?

—WELCH - CROSS - FARSIU—

1 A. No, I was talking about the bidders.

2 Q. Okay. So the bidders were in the -- were in these emails
3 that were provided to me last night, right?

4 A. Yes, there was the email with the top bidders, and then
5 there was also the email with the oil field bidders.

6 Q. How long have you had that evidence at your disposal for
7 this case?

8 A. I can't say I'm sure.

9 Q. It wasn't last night, was it?

10 A. Not to my knowledge, no.

11 Q. Well, you would have had that when you filed the first
12 lawsuit against Mr. Garafola, correct?

13 A. I'm not sure. Probably.

14 Q. Well, are you aware that Sandhills has a lawsuit against
15 Mr. Garafola, Marlene Greene, Bidfacts, and Bidpath?

16 A. Yes.

17 Q. Okay. So those were the documents that you were basing
18 that lawsuit off of it, isn't it?

19 A. Yes.

20 Q. So you had. You had them -- you had them back in July
21 and August, right?

22 A. August, yeah.

23 Q. Now -- and that would, by the way, that would go with
24 respect to the entire package that was provided to me last
25 night, correct?

—WELCH - CROSS - FARSIU—

1 A. From what I understand there was a negotiation on whether
2 those would be sealed or not, which is what the holdup was.

3 Q. That's what you think the holdup was?

4 A. Yes.

5 Q. Okay. Again, you have activity and involvement in both
6 lawsuits, correct?

7 A. Yes.

8 Q. In the first lawsuit, there was a confidentiality order
9 that was entered, wasn't there?

10 A. I believe so. Not sure but...

11 Q. Okay. If there was one, you would have produced the
12 documents, right? Do you know that or no?

13 A. I'm not sure on that one.

14 Q. Okay. So with respect to what you testified as to
15 non-monetary damage, you said "you don't know," "it's hard to
16 tell," and basically you said you had customer complaints,
17 right?

18 A. Yes.

19 Q. Now, you also talked about there was confusion, correct?

20 A. Yes.

21 Q. Now, Mr. Garafola had an email address when he was
22 working for Sandhills and running Equipmentfacts, correct?

23 A. Yes.

24 Q. What was the email?

25 A. Larry@equipmentfacts.com.

—WELCH - CROSS - FARSIU—

1 Q. Okay. And, in fact, all of his company, meaning all of
2 his people that he brought to Sandhills, all of them had the
3 same email address, correct?

4 A. Yes.

5 Q. There's not anybody outside of the New Jersey office that
6 had a different email address; is that right?

7 A. Correct.

8 Q. So all of those people had an equipmentfacts.com email
9 address?

10 A. Yes.

11 Q. Anybody outside of the New Jersey office would not have
12 had that email address?

13 A. That's not true. There's employees in Lincoln that would
14 have that email address as well.

15 Q. Who would they be?

16 A. Colton Rush.

17 Q. Who is Colton Rush?

18 A. He's a sales rep -- or a representative for Sandhills in
19 Lincoln.

20 Q. Okay. Was he directly the liaison to Equipmentfacts?

21 A. No.

22 Q. What was his role?

23 A. He was a clerk. He was underneath Larry.

24 Q. Okay. So he was doing Equipmentfacts work?

25 A. Yes.

—WELCH - CROSS - FARSIU—

1 Q. So, by the way, those email addresses, are they still
2 alive?

3 A. Not -- there may be a couple that are still forwarded if
4 there's any emails received, but not live as in people sending
5 out emails from them.

6 Q. If I was to send an email to his -- Mr. Garafola's
7 equipmentfacts.com email address, would it go through?

8 A. It would go through, yes.

9 Q. Yeah. You'd get that, right?

10 A. Yes.

11 Q. Now, do you think that's confusing for people who may be
12 customers of Sandhills?

13 A. No, they're not being responded to.

14 Q. Okay. But you're monitoring the emails, right?

15 A. Yeah.

16 Q. And these people think that Larry still works there,
17 right?

18 A. I can't speak to whether -- I can't speak to whether
19 that's what they think or not.

20 Q. Well, you've testified today about a lot of things about
21 what you think other people thought.

22 So you don't have any opinion today on this question as
23 to whether or not people who send an email to Larry's email
24 address at Equipmentfacts would know that they're sending an
25 email to Larry or that Larry's already gone? You have no

—WELCH - CROSS - FARSIU—

1 opinion on that?

2 A. I'm not going to speculate on what somebody thinks when
3 the send an email --

4 Q. Now you're not going to speculate, right? That's your
5 testimony?

6 A. Correct.

7 Q. Okay. Now, with respect to basically harm to reputation,
8 as you testified, you've indicated two clients that you
9 believe that you lost, and you indicated to the Court what the
10 monetary damages would be, right?

11 A. Yes.

12 Q. Okay. And other than that, there's nothing else, is
13 there?

14 A. There's more.

15 Q. Oh, there's more. Well, I'm just -- your testimony, I
16 wrote down. Okay. And you said "hard to know."

17 And, essentially, would you agree with me, that this
18 temporary restraining order was filed out of fear? You didn't
19 know what type of damage your reputation had incurred, right?

20 A. Larry was soliciting our customers, that's the reason for
21 the TRO. We didn't want anymore damages to occur.

22 Q. Okay. Mr. Welch, you would agree with me that Sandhills
23 is a billion-dollar company, right?

24 A. I don't have any clue as to what the financials would
25 look like for Sandhills.

—WELCH - CROSS - FARSIU—

1 Q. Have you seen the papers that have been filed in this
2 case?

3 A. Yes.

4 Q. And did you ever see a submission where it was indicated
5 that Sandhills -- and I have to go find it now -- but
6 Sandhills had grossed approximately \$2.9 billion in the year
7 2018?

8 A. Do you have the email? Could I see it?

9 Q. Sure. Give me one second.

10 I want to make sure I am clear. It's not an email. It's
11 on your website. If you go to the website -- let me just ask
12 you this.

13 What is prnnewswire.com/news-releases? Do you guys put
14 out or publish articles about your company on that site?

15 A. That would be a press release, yes.

16 Q. If a press release said that the PR Newswire reported
17 that in 2018 Sandhills had a record-breaking year wherein it
18 exceeded \$2.93 billion in gross merchandise value, does that
19 sound familiar?

20 A. Oh, can I actually see it?

21 Q. It's just a brief. I don't have the website on me?

22 A. What you're referring to, it's not our revenue.

23 Q. I didn't say that.

24 A. You just called us 2. -- you said we were a
25 billion-dollar industry or a billion-dollar company. That's

—WELCH - CROSS - FARSIU—

1 not our revenue. We make a commission fee on what's listed on
2 our sites. That's not even close to our revenue.

3 Q. How about this. Is Sandhills -- it's Sandhills Global,
4 right?

5 A. Sandhills Global, yes.

6 Q. What was the name before that?

7 A. Sandhills Publishing.

8 Q. And why did you come to Sandhills Global?

9 A. Why did I come to Sandhills Global?

10 Q. No. Are you representing Sandhills?

11 A. Yes.

12 Q. How did Sandhills come to Sandhills Global?

13 A. As a name?

14 Q. Yes.

15 A. Because we're doing business internationally.

16 Q. That's the reason?

17 A. Yes.

18 Q. Okay. And did you get that idea from Marlene Greene?

19 A. No.

20 Q. That was something that you guys came up with, right?

21 A. Yeah.

22 Q. So, let me ask you this, is Sandhills, is it a
23 multimillion-dollar company?

24 A. Like I said, I don't want to speculate on our revenue. I
25 would assume that it is probably a multimillion-dollar

—WELCH - CROSS - FARSIU—

1 company.

2 Q. You're the big dog on the block, aren't you?

3 A. I'm the director of new product sales. I oversee a
4 portion of the Sandhills business.

5 Q. Would you agree with me that Sandhills, in the auction
6 industry, is the big dog on the block?

7 Would you agree with that?

8 A. It's got several competitors in the market. I would
9 probably argue that Proxibid and Sandhills are the -- are two
10 of the larger ones, as well as Ritchie Bros. There's several.

11 In fact, Ritchie Bros. is a \$5.5 billion company so...

12 Q. Well, how do you know that?

13 A. Because it's publicly available on their website.

14 Q. So you know how much they're worth, but you don't know
15 what Sandhills is worth?

16 A. They're a publicly traded company.

17 Q. Okay. So, as you sit here today, you've worked for
18 Sandhills since 2005. You have no idea what the company
19 makes?

20 A. No. We're a privately held company, family-owned. So
21 they keep that stuff very close. So, no, I don't know what
22 we're worth.

23 Q. You have no idea?

24 A. No.

25 Q. Okay. Now, again, I want to go back to the non-monetary

—WELCH - CROSS - FARSIU—

1 issues.

2 You said you had complaints, customer complaints. Those
3 customer complaints were from the previous affidavits that
4 were provided, correct?

5 A. Yes.

6 Q. You haven't had any of those, have you, lately?

7 A. No.

8 Q. And again, you haven't lost any customers other than what
9 you just testified to?

10 A. Not that I'm aware of.

11 Q. Okay. You don't have any evidence today for the judge to
12 consider as to whether or not you lost any other customers
13 other than the two that you just indicated to?

14 A. Like -- okay. There's also the issue of doing business
15 with customers that we're also doing business with. So, it
16 gets -- it's impossible to put a number figure, a dollar
17 figure on this amount because if Larry and Proxibid and us are
18 all providing online bidding services, we eat out of each
19 other's, so if there's three providers at an auction, each one
20 of the providers is going to get less revenue from him. So
21 just simply by doing business with auctioneers that we're
22 doing business with, that takes away from us.

23 Q. You would agree with me that when Mr. Garafola was
24 working for Sandhills, he was dealing with online auctions,
25 correct?

—WELCH - CROSS - FARSIU—

1 A. Yes.

2 Q. He was dealing with live auctions online, right?

3 A. Timed auctions, as well.

4 Q. How many timed auctions did he perform?

5 A. Nobody performs a timed auction. It's done by the
6 computer.

7 Q. How many timed auctions, sir, do you think he was
8 involved in?

9 A. Well, he was -- he did lots of timed auctions prior to
10 acquisition. When it got brought internal, Equipmentfacts, we
11 took the timed auctions, put those on the AuctionTime
12 platform, and he was instrumental in getting Ryan Auctions to
13 try AuctionTime.

14 Q. Mr. Welch, does -- am I correct in that -- well, you know
15 what. Hold on a second.

16 You were shown a couple documents with respect to the
17 non-competes, the APA, right?

18 Do you remember seeing those?

19 A. Yes.

20 Q. There was a document that you weren't shown. There was
21 an Employment Agreement that was provided to Mr. Garafola,
22 correct?

23 A. Yes.

24 Q. And that Employment Agreement, you would agree with me,
25 was part and parcel with the Purchase Agreement, right?

—WELCH - CROSS - FARSIU—

1 A. It was separate from the Purchase Agreement. It was an
2 Employment Agreement, so it was separate.

3 Q. Is the Employment Agreement mentioned in the APA?

4 A. Yes, I believe so.

5 Q. Okay. And weren't there discussions with Mr. Garafola as
6 to how this purchase was going to take place, right?

7 A. Yes.

8 Q. You remember having those discussions, right?

9 A. Yes.

10 Q. Part of the discussion was, what's going to happen,
11 Larry, is you're going to basically -- we're going -- you're
12 going to have an Asset Purchase, but everything is going to
13 stay the same, right, didn't you say that to him?

14 A. Yes. With the exception of we would handle the sales
15 side.

16 Q. Well, you told him that you're going to be an employee.
17 We're going to give you a two-year contract --

18 A. It was going to be a three-year contract --

19 Q. Excuse me.

20 THE COURT: Wait. Wait. Wait until the question is
21 fully posed.

22 Q. We're going to negotiate a base salary, right? All that
23 stuff, right?

24 A. Yes, correct.

25 Q. So, if -- you don't have any idea if Mr. Garafola would

—WELCH - CROSS - FARSIU—

1 have sold the business for 1.5 million if he wasn't going to
2 be employed with Sandhills, do you?

3 A. I don't -- I don't want to speculate on whether he would
4 or wouldn't.

5 Q. Okay. So again, that's something you wouldn't speculate
6 on, right?

7 A. No.

8 Q. Now, by the way, when you say that Permian left --
9 specifically left Sandhills, you're blaming Mr. Garafola for
10 that, right?

11 A. Yes.

12 Q. You did not have any conversations with anybody at
13 Permian about why they left, did you?

14 A. No.

15 Q. Okay. And that is you speculating as to why Permian left
16 Sandhills; isn't that correct?

17 A. They left and moved over to that platform, which is why
18 we made that assumption.

19 Q. Okay. You're speculating, right?

20 A. We saw them move their business from Equipmentfacts to
21 OilfieldFacts.

22 Q. What platform are you talking about?

23 A. OilfieldFacts.

24 Q. What's that?

25 A. Well, Bidpath to start with -- Bidfacts to start with,

—WELCH - CROSS - FARSI—

1 and then ultimately OilfieldFacts.

2 Q. Okay. You're saying Permian went to Bidfacts?

3 A. Bidfacts, yes.

4 Q. Okay. Now, as you sit here today, do you know whether or
5 not Mr. Garafola ever worked for Bidpath or Bidfacts?

6 A. All I know is that by the email correspondence, the email
7 said that Larry was setting up a business, Bidfacts, in
8 conjunction with Marlene Greene and Bidpath.

9 Q. Well, why don't we look at that document that's been
10 discussed. Let me see if I can -- we killed a lot of trees
11 here today. Hang on a second.

12 What you're talking about is the -- I believe -- take a
13 look at P-6.

14 Is that the document you're talking about?

15 A. Yes.

16 Q. Now, before we get into P-6, BidCaller, what is
17 BidCaller?

18 A. BidCaller is a software that now runs Equipmentfacts.

19 Q. But BidCaller was -- well, prior to this purchase of
20 Equipmentfacts, aren't I correct that Sandhills was doing
21 timed auctions and attempting to do live auctions through
22 BidCaller?

23 A. We weren't doing timed auctions on BidCaller.

24 Q. I didn't say that.

25 A. You said timed auctions. Oh, we were doing simulcast

—WELCH - CROSS - FARSIU—

1 auctions on BidCaller, yes.

2 Q. You would agree with me that a timed auction is different
3 than a live auction?

4 A. Ah, yes.

5 Q. Okay. And my question was, Sandhills was doing -- the
6 majority of their work was timed auctions, correct?

7 A. Not necessarily, no.

8 Q. Well, you were attempting to do live auctions through
9 BidCaller, right?

10 A. Yes.

11 Q. Okay. And it wasn't doing very well, was it?

12 A. No, it was doing pretty well. Yeah.

13 Q. So why do you -- if it was doing so well, why did you
14 want to purchase Equipmentfacts from Mr. Garafola?

15 A. It was a natural fit. We were stronger in the farm
16 market, they were stronger in the construction and truck
17 market.

18 Q. Okay. And Equipmentfacts was only doing business in the
19 truck and heavy machinery industry; isn't that correct?

20 A. No, that's not true.

21 Q. That's not true. Okay. But that's what you wanted him
22 for, right?

23 A. That's where they were the strongest, yes.

24 Q. And so, you needed them -- when they came over, did you
25 use BidCaller?

—WELCH - CROSS - FARSI—

1 A. Yes.

2 Q. You did?

3 A. Eventually, yes.

4 Q. No. No. I asked you, "when they came over," were you
5 using BidCaller?

6 A. Yes.

7 Q. Okay. At some point you canned BidCaller, didn't you?

8 A. No.

9 Q. Okay. You didn't use Bidpath?

10 A. We also used BidCaller. We kept the system's different
11 for a time, so BidCaller continued to function as is, as did
12 Equipmentfacts continue to function as is. During the time
13 from acquisition to ultimately April of 2019, Mr. Garafola was
14 instrumental in developing the BidCaller software to the point
15 where we were comfortable with then taking the brand BidCaller
16 and making it Equipmentfacts and having BidCaller be the
17 engine to run Equipmentfacts as one entity versus the two
18 separate entities ultimately replacing Bidpath.

19 Q. Let me back up. When you purchased Equipmentfacts, there
20 was a specific reason why you wanted Equipmentfacts and that
21 was because they were very good in the construction and truck
22 industry, right?

23 A. That's one of the reasons. They were also very good at
24 clerking auctions in general, so there was a definite
25 knowledge that we could pull from.

—WELCH - CROSS - FARSIU—

1 Q. When Equipmentfacts came over, did you use -- did
2 Equipmentfacts use BidCaller at that time?

3 A. Equipmentfacts used Bidpath at that time.

4 Q. Thank you. So BidCaller wasn't being used by
5 Equipmentfacts, was it, at that time?

6 A. It was -- no.

7 Q. And what you guys -- you also told Mr. Garafola and his
8 people, that you wanted to learn from them as to how they were
9 doing these live auctions and how they were generating the
10 business and doing these auctions, right?

11 A. We wanted to learn, yes, how they conducted the auctions,
12 correct.

13 Q. And for months, you guys were learning from Mr. Garafola,
14 right?

15 A. Yes.

16 Q. And now, this was -- obviously, the documents indicate it
17 was July 16th of 2018 on the purchase. You remember that in
18 and around April 29th of 2019, you guys, Sandhills, made the
19 decision that we're getting rid of Bidpath, right?

20 A. We made the decision long before that. Larry was a part
21 of that decision.

22 Q. Larry's not going to testify to that, sir. Larry's going
23 to testify that you guys came to him and said that you guys
24 didn't want to use Bidpath anymore. You wanted to use
25 BidCaller, right?

—WELCH - CROSS - FARSIU—

1 A. We, in conjunction with Larry, made the decision long
2 before that, and Larry was instrumental in developing
3 BidCaller to ultimately replace an expense, which is Bidpath.

4 Q. Sandhills, or you, or someone at Sandhills, pulled the
5 trigger on getting rid of Bidpath in April of 2019, in and
6 around that time?

7 A. Larry actually gave the okay to do so.

8 Q. Well, Larry told you that he didn't think the software
9 was ready, didn't he?

10 A. No.

11 Q. Okay. And Ms. Greene didn't --

12 A. After --

13 Q. Hold on. Ms. Greene didn't tell you the same thing?

14 A. After the fact, they did. But up to and leading to the
15 point where we switched it out, they thought it was good.

16 Q. So your testimony is going to be that Mr. Garafola and
17 Ms. Greene told you guys -- or you, or whoever, from
18 Sandhills, in and around April of 2019 that, yup, this is a
19 good idea, let's just get rid of Bidpath?

20 A. I don't know about Marlene, but Larry, yes, was in
21 support of moving away from Bidpath and on to BidCaller, yes.

22 Q. Am I correct that during those, let's call it 10 months,
23 that Ms. Greene was helping Sandhills with accounting issues
24 with respect to the Equipmentfacts type of program, right?

25 A. Her role with Equipmentfacts at the time of acquisition

—WELCH - CROSS - FARSIU—

1 was with regards to invoicing customers and accounts
2 receivable in general, yes.

3 Q. But Sandhills had issues in that area for the live
4 auctions when she came over, isn't that right?

5 A. BidCaller did not have issues. Equipmentfacts, we needed
6 to meld that into our processes and automate that process.

7 Q. Okay. Let's -- I want to show you --

8 MR. FARSIU: And, Judge, I have to see if I have an
9 extra copy. I thought the document was going to be used but
10 it wasn't.

11 Do you have an extra copy of the Employment
12 Agreement? I guess we'll have this marked D-1.

13 BY MR. FARSIU:

14 Q. Have you seen D-1 before?

15 A. D-1?

16 Q. Yes, there's a marking on that document.

17 A. Okay.

18 Q. You see there at the bottom, it's marked D-1?

19 A. Yes. Yes.

20 Q. Have you seen that document before?

21 A. Yes.

22 Q. Okay. That document is the Employment Agreement that
23 Mr. Garafola was required to sign when he -- when you guys
24 went to your Purchase Agreement, correct?

25 A. Yes.

—WELCH - CROSS - FARSIU—

1 Q. Okay. Because if he doesn't sign this Employment
2 Agreement, the whole transaction doesn't go through, does it?

3 A. The Employment Agreement was actually Larry that
4 negotiated that.

5 Q. Sir, my question to you is, if the Employment Agreement
6 wasn't signed, the entire acquisition would not have gone
7 through; is that correct?

8 A. That's not true.

9 Q. Oh, so you think that Mr. Garafola would have -- or
10 Sandhills wouldn't have signed or agreed to an agreement, do
11 you think the acquisition would have went through?

12 A. I can't speculate on whether Larry would have gone
13 through with it or not.

14 Q. Didn't he tell you, sir, that the Asset Purchase
15 Agreement would not go through unless an Employment Agreement
16 was agreed to?

17 A. I don't recall if that was said or not.

18 Q. So you have no recollection of that?

19 A. No.

20 Q. So -- and it wasn't Sandhills' requirement to have an
21 Employment Agreement?

22 A. Sandhills' requirement of an Employment Agreement? No.

23 Q. I thought you testified earlier that there were things
24 that were required upon purchase and one of them was an
25 Employment Agreement?

—WELCH - CROSS - FARSIU—

1 A. The covenants of the Purchase Agreement were what was
2 required.

3 Q. So you wanted Mr. Garafola to enter into an Asset
4 Purchase Agreement with restrictive covenants that applied to
5 his employment and the Purchase Agreement, right?

6 A. No, applied to the Purchase Agreement. We also do have
7 restrictive covenants that we put forth in place for all of
8 our employees and not all of your employees have employment
9 agreements.

10 Q. This really is not that hard of a question.

11 Your attorney, or you, someone, this is your document,
12 isn't it? Mr. Garafola didn't create this document?

13 A. No, but he negotiated it.

14 Q. Sir, just answer the question. He did not create the
15 document; isn't that correct?

16 A. No, Larry did not create the document.

17 Q. Okay. This is a Sandhills' document?

18 A. That he negotiated, yes.

19 Q. And that Sandhills required, right?

20 A. We did not -- we don't require an Employment Agreement.

21 Q. Now, let's go to -- well, you would agree with me that
22 Sandhills, Mr. Peed, entered into this Employment Agreement,
23 right?

24 A. Yes.

25 Q. And there's obligations on both parties' part, right?

—WELCH - CROSS - FARSIU—

1 A. Yes.

2 Q. Well, it's not a one-sided agreement, right?

3 A. Right.

4 Q. So, if you go to Number 3 on page 2, do you see where it
5 says "duties and responsibilities"?

6 A. Yes.

7 Q. Now, this document was going to pertain to Mr. Garafola
8 being an employee at Sandhills, right?

9 A. Yes.

10 Q. Okay. So this says -- am I correct, it says, "Garafola
11 shall be employed in the position of manager of auction
12 services or such other position as mutually agreed on by
13 Garafola and the company."

14 Did I read that correctly?

15 A. Yes.

16 Q. So he was the manager of auction services, is what you
17 call it, right?

18 A. The department manager, yes.

19 Q. Okay. And he was going to report to you, right?

20 A. Yes.

21 Q. And then it says, "A job description of the position is
22 attached hereto as Schedule A and made a part hereof."

23 Do you see that?

24 A. Yes.

25 Q. Where is Schedule A?

—WELCH - CROSS - FARSIU—

- 1 A. I'm not sure.
- 2 Q. Schedule A was never prepared, was it?
- 3 A. I don't recall whether it was or wasn't.
- 4 Q. You don't recall whether or not Schedule A was prepared?
- 5 A. No.
- 6 Q. Is there a reason why you don't remember that?
- 7 A. I don't.
- 8 Q. You don't remember Larry coming to you throughout the
- 9 year saying, "Where is Schedule A"?
- 10 A. Not once.
- 11 Q. Okay. You remember that, though, right?
- 12 A. No, he never came to me asking for that, no.
- 13 Q. You specifically remember that?
- 14 A. Yes.
- 15 Q. Now, with respect to Schedule A, Schedule A was supposed
- 16 to have a job description, right?
- 17 A. It looks like -- yes.
- 18 Q. Sir, this is not the first time you saw this document,
- 19 right?
- 20 A. Nope.
- 21 Q. So Schedule A -- wasn't Schedule A also supposed to
- 22 include Larry's -- besides the job description. It was
- 23 supposed to include a commission and bonus structure, wasn't
- 24 it?
- 25 A. No.

—WELCH - CROSS - FARSIU—

1 Q. When Larry agreed to come on to Sandhills, you didn't
2 promise him a bonus or commission structure?

3 A. No. Larry negotiated a clause that if revenues of
4 Equipmentfacts increased that he would get a raise based on
5 those increases, which he received on July 14th.

6 Q. That was based off of his base salary, right?

7 A. Yes, correct.

8 Q. So, if Schedule A was never prepared and his job duties
9 were never provided to him in writing, as per this agreement,
10 that part of the agreement had been breached, correct?

11 A. No, he knew what his job responsibilities were. They
12 didn't change from the time he came over from Equipmentfacts
13 to when he was running Equipmentfacts for Sandhills. And his
14 title stayed the same throughout. I was never asked for a job
15 description by Larry.

16 Q. Sir, the contract requires Sandhills to provide a
17 Schedule A, does it not?

18 A. It requires a description of his job duty which he had.

19 Q. Where was that?

20 A. He knew what his job duties were. They didn't change
21 from Equipmentfacts to now.

22 Q. See, Mr. Welch, that's the problem with this entire case.

23 You guys are taking the position that Larry can't do
24 anything. Yet, the most important part of his Employment
25 Agreement was never provided to him, which was supposed to

—WELCH - CROSS - FARSIU—

1 specifically provide his job description, and you're saying in
2 front of this Court that that wasn't important, right?

3 A. He knew what his job description was.

4 Q. He also knew when you purchased Equipmentfacts his job
5 wasn't going to change, he was only going to do
6 Equipmentfacts, right?

7 A. No. All of our products overlap each other. So just by
8 the simple fact that he's talking and working with
9 auctioneers, there's other products that we also offer to
10 auctioneers that come from that. Naturally, he's going to get
11 pulled into other conversations on other products.

12 Q. Well, sir, we don't know that because you didn't provide
13 Schedule A?

14 A. Well, he did that. He brought customers to us and sold
15 them on other services, so he must have known that.

16 Q. Oh, he must have known that. Okay.

17 But you don't think it's important for Sandhills -- by
18 the way, you want Mr. Garafola to not perform any auction
19 services, right?

20 A. I want him to abide by the covenants of the agreement.

21 Q. That's not good enough for this hearing. We need to
22 know. You just can't leave it out there like that, sir.

23 You do not want Mr. Garafola to perform any online
24 auction services; isn't that correct?

25 A. Any online auction services in the businesses that we run

—WELCH - CROSS - FARSIU—

1 and our affiliates.

2 Q. Okay. So, let me ask you a question. Sandhills is in
3 the meat business, aren't they?

4 A. Yes.

5 Q. Okay. If Larry Garafola says, you know what, I'm buying
6 a cattle farm tomorrow, and I'm going to sell meat across the
7 country, would that be a violation of his non-compete?

8 A. I don't want to speculate on what this new business would
9 look like. I don't know without knowing the details of the
10 business whether or not it would compete with us or not.

11 Q. Okay. Let's say it's the exact same meat business that
12 Sandhills is involved in. Is he in violation of the
13 non-compete?

14 A. He is providing online auction services?

15 Q. Sir, answer the question.

16 A. Without knowing that, I can't answer the question.

17 Q. So, you have no opinion as to whether or not Mr. Garafola
18 says, you know what, I'm going to go buy a cattle farm
19 tomorrow and I'm going to sell meat just like Sandhills does.

20 Is that a violation?

21 A. Is he selling it through online auction services?

22 Q. Is that what you guys do?

23 A. We don't.

24 Q. Okay. So he's not doing that, then. Is it a violation
25 of his non-compete?

—WELCH - CROSS - FARSI—

1 A. He's not doing what, sorry?

2 Q. He's not selling it via online auction?

3 A. Then, no, that's not a competition.

4 Q. Okay. What happens if he's doing it by online auction?

5 A. Yes.

6 Q. So him selling meat via auction, would be a violation of
7 his non-compete?

8 A. Online auction services for Sandhills and all of its
9 affiliates.

10 Q. Okay. I want the Court to understand what online auction
11 services means. That means, you're handling the auction for
12 the auctioneer, correct?

13 A. Whether it be through a timed or an online simulcast
14 auction, yes.

15 Q. Okay. The point is an auction services that Sandhills
16 provides is basically you run the auction for the auctioneer,
17 right?

18 A. Again, not necessarily. There's times when the
19 auctioneer runs the online auction software. There's times
20 when we run it for them. There's times when there's no one
21 running it because it's timed and it's run by the computer.

22 Q. Well, you'd agreed with me that an online live auction is
23 not a timed auction, right?

24 A. Yes.

25 Q. And so, your testimony is that -- I'm trying to

—WELCH - CROSS - FARSI—

1 understand what you think the non-compete is.

2 So, are you saying that anything that has to do with
3 online auctions -- what I mean by that, Mr. Garafola when he
4 worked for Sandhills was handling online auctions and he was
5 handling them for auctioneers who were clients of Sandhills,
6 correct?

7 A. Yes.

8 Q. Okay. And that was the nuts and bolts of the auction,
9 from A to Z. Meaning, you're handling the inventory, you're
10 handling the marketing, you're handling the advertising,
11 you're running the software for them, correct?

12 A. Those are components of it.

13 Q. And he's getting the bidders, right?

14 A. Those are components of running the action.

15 Q. Okay. That's what he was doing for Sandhills, right?

16 A. It's part of what he was doing for Sandhills, yes.

17 Q. Does Sandhills license software?

18 A. In some capacities, yes.

19 Q. Does Sandhills license software to third-parties and
20 simply just charge a subscription fee?

21 A. We do. We have a product called "Fleet Evaluator" that
22 we license. We have several products that we do license
23 software.

24 Q. What was the name of it?

25 A. Fleet Evaluator.

—WELCH - CROSS - FARSI—

1 Q. Okay. And I noticed, by the way, that you had brought up
2 HiBid and AuctionFlex in your -- I think you said AuctionFlex,
3 didn't you?

4 A. Yes.

5 Q. Okay. And you said that those were competing with what
6 Mr. Garafola is doing, correct?

7 A. I didn't mention anything about AuctionFlex, but HiBid,
8 yes.

9 Q. Well, AuctionFlex and HiBid, during the relevant time
10 period, which means up until the time you terminated
11 Mr. Garafola, they weren't owned -- those two companies
12 weren't owned by Sandhills?

13 A. Yes, they were.

14 Q. They were?

15 A. Yes.

16 Q. What's 5 Palms, LLC?

17 A. That's a subsidiary of Sandhills Publishing.

18 Q. It's a subsidiary?

19 A. Yes.

20 Q. Would that -- do you have anything that would prove that
21 they're a subsidiary of that?

22 A. I'm not an attorney. I don't know what the corporate
23 structure was, but that's one of our brands and products.

24 Q. Okay. So you're saying that the brand HiBid and
25 AuctionFlex, were they on your website in July of 2019?

—WELCH - CROSS - FARSIU—

1 A. I believe so.

2 Q. You don't know for a fact?

3 A. I don't know for a fact.

4 Q. If I told you that they weren't, would that surprise you?

5 A. Not necessarily.

6 Q. Well, this is the relevant time period, so that's why I'm
7 asking.

8 So you have no idea whether or not it was on your
9 website?

10 A. No.

11 Q. Now, with respect to Mr. Garafola selling licenses for
12 software packages and that's it, he's not doing anything with
13 the auction. He's not telling the auctioneer to not work with
14 Sandhills. He's just selling the license software, is that
15 competing with -- is that a violation of the non-competes?

16 A. Absolutely.

17 Q. How so?

18 A. We could just as easily take BidCaller and charge the way
19 that he's charging for it, we choose not to. But BidCaller is
20 the exact same thing that he's offering if he's selling a
21 license. We actually do charge an event fee, that is, a
22 license fee for that auction in addition to the commission
23 structure that we charge for the advertising produced by
24 Equipmentfacts. It's just one component of what we're
25 selling.

—WELCH - CROSS - FARSI—

1 Q. Well, let me ask you this: Do you know what a white
2 label means?

3 A. Yes.

4 Q. What does it mean?

5 A. It means that if you go to somebody's website, you
6 can't -- you don't see branding for the third-party vendor.

7 Q. Sandhills doesn't provide that, do they?

8 A. Yes, we do.

9 Q. So your testimony is Sandhills provides software
10 licensing to third-parties, and you let them brand it as they
11 see fit?

12 A. You asked me if we provided white label solutions. Yes,
13 we do.

14 Q. Is the answer to my question yes or no? I'm not
15 following you.

16 A. Yes.

17 Q. It is?

18 A. White label solutions, yes.

19 Q. Okay. And you've been doing that for how long?

20 A. Years.

21 Q. Mr. Garafola wasn't doing that, though, was he?

22 A. When --

23 Q. That was not part of his duties at Sandhills, was it?

24 A. Selling white label solutions?

25 Q. Yeah.

—WELCH - CROSS - FARSI—

1 A. Yeah, just by simple -- virtue of him working with
2 auction companies, absolutely, that was a part of the
3 business.

4 Q. All right. Sir, none of your papers -- by the way,
5 you've reviewed all the briefs that have been filed?

6 A. Yes.

7 Q. None of your briefs ever mentioned that. Is there a
8 reason why?

9 A. No.

10 Q. If Mr. Garafola tomorrow says, you know what, I'm just
11 going to -- I'm going to open up a business that I have a
12 rental facility for an auctioneer, is that a violation of the
13 non-compete?

14 A. A rental facility for an auctioneer?

15 Q. Yeah.

16 A. It's not providing online bidding services or online
17 auction services.

18 Q. He's providing the venue.

19 A. Are you talking about just like renting a building?

20 Q. Sure.

21 A. No, that's not in competition.

22 Q. Okay. So he can do that?

23 A. Yeah.

24 Q. Okay. What is it -- is there anything else he can do
25 according to you?

—WELCH - CROSS - FARSIU—

1 MR. MILLER: Objection.

2 THE COURT: Basis for your objection, Counsel?

3 MR. MILLER: "Anything else you can do," he didn't
4 tie it to an actual question or a response. He's now asking
5 Mr. Welch to otherwise speculate about what could Mr. Garafola
6 do that wouldn't be a violation.

7 MR. FARSIU: Judge, this entire case is about what
8 they have been speculating -- he's been speculating all day to
9 begin with. But, two, no one in this room knows what exactly
10 Mr. Garafola is allowed to do. So I want to hear from
11 Sandhills' witness that had all the communications and
12 negotiated the contracts -- because no one knows what
13 Mr. Garafola is allowed to do. So I want to hear it from
14 their witness so that we know what their position is.

15 THE COURT: If you can answer the question, you can
16 answer it.

17 THE WITNESS: You want me to speculate on what he
18 could do?

19 THE COURT: If you can answer the question, you can
20 answer it.

21 THE WITNESS: I can't. I don't know what he could
22 do. I don't.

23 Q. You understand the question? Here's the question. I'll
24 rephrase it. There was a little bit of a delay.

25 My question to you, sir, is: What is it that

—WELCH - CROSS - FARSIU—

1 Mr. Garafola can do with respect to working within the auction
2 industry that would not violate the non-compete?

3 A. He could go back to what he was doing prior to forming
4 Equipmentfacts, which was buying and selling equipment at
5 auctions. I have no problem with that.

6 Q. Okay. Well, you had a problem with the emails. I
7 believe it was AuctioneerFacts, right? You had a problem with
8 that email about his sons, right?

9 A. Absolutely.

10 Q. I'm sorry. Equipment Auctioneer, right?

11 A. Yes, absolutely.

12 Q. Sir, Equipment Auctioneer does exactly what you just
13 said.

14 A. Not at all. It doesn't do it at all.

15 Q. How do you know that?

16 A. Because they're soliciting for our customer to list there
17 equipment on their auction. I'm saying prior to the
18 acquisition of Equipmentfacts and prior to the formation of
19 Equipmentfacts, Larry bought and sold equipment of his own,
20 paid for and then resold. That's what I'm saying he can do.
21 Not what they're doing with Equipment Auctioneer.

22 Q. Sir, that's exactly what his kids are doing.

23 A. No, it's not.

24 Q. Exactly what they're doing.

25 A. They're buying the equipment?

—WELCH - CROSS - FARSIU—

1 Q. They are selling the equipment to certain people.

2 A. Is it their equipment?

3 Q. Some are, some aren't?

4 A. It's, again, they're trying to get consigned equipment
5 from our customers.

6 Q. Your customers would then sell the equipment on an
7 auction through your platform, sir; isn't that correct?

8 A. The equipment that the customer owns. I don't know if
9 you're following me.

10 Q. Sir, if they bought the equipment, they own it, right?

11 A. Mr. Garafola or the customer?

12 MR. FARSIU: Oh, my God. Judge, this guy's got to
13 start answering some questions.

14 MR. MILLER: Objection, Judge.

15 THE COURT: Counsel, don't address it like that.

16 Let's just keep the questions narrowly tailored. If you have
17 an objection, put the objection on the record.

18 MR. FARSIU: Judge, I want to see if I have some
19 copies of these certifications.

20 Q. Mr. Welch, you remember you signed several certifications
21 in this case. Do you remember that?

22 A. Yes.

23 Q. And you indicated that in some of these -- I'm just
24 trying to see if I have extra copies. I may not. I don't
25 know, Judge, if you want to take a break.

—WELCH - CROSS - FARSIU—

1 THE COURT: What certifications are you referring to?

2 MR. FARSIU: Well, I have -- Mr. Welch has a
3 certification November 25th.

4 THE COURT: Which ones are you going to be asking
5 questions about right now?

6 MR. FARSIU: I'd like to ask him questions about all
7 of them.

8 THE COURT: November 25th.

9 MR. FARSIU: November 25th, January 22nd, and
10 there's one more.

11 THE COURT: Mr. Miller, do you have a copy of it?

12 MR. MILLER: Unfortunately, I don't.

13 THE COURT: You don't?

14 MR. MILLER: I do not.

15 THE COURT: If you can pass it up, we'll get copies.

16 MR. FARSIU: I just want to see one thing.

17 I can't find the other one, Judge. I know I have it
18 here, but -- I believe there's one more. Here, it is. Sorry.
19 It's December 23rd. Judge, this goes to you.

20 BY MR. FARSIU:

21 Q. Mr. Welch, I'm going to show you these three documents
22 that have been marked D-2, D-3, and D-4.

23 Do you recall signing certifications in this case?

24 A. Yes.

25 Q. Okay. And in the certifications, you see that there is a

—WELCH - CROSS - FARSIU—

1 requirement to tell the truth, right?

2 A. Yes.

3 Q. And in your declarations, I want to just show you or turn
4 your attention to December 23rd and the January 22nd
5 certifications. I believe those would be D-3, D-4.

6 A. Got it.

7 Q. And on D-3, you see Number 4, it says that, "On Friday,
8 December 20th, 2019, I became aware of defendants' Lawrence
9 Garafola and Facts Technology sending email solicitations to
10 Sandhills' customers after the Court entered its temporary
11 restraining order on December 16th, 2019," right?

12 A. Yes.

13 Q. Okay. And if you go to D-4, you state the same thing in
14 Number 4 essentially, but, you say, "On Monday, January 20th,
15 2020, I became aware..." And it goes into other things about
16 sending emails solicitations, right?

17 A. Where on D-4?

18 Q. Number 4?

19 A. Number 4, yes.

20 Q. Now, you testified earlier that Sandhills provides an
21 email hosting system, right?

22 A. Yes.

23 Q. And if I'm correct, the email hosting system is,
24 essentially, you are hosting the system for an auctioneer
25 company; is that correct?

—WELCH - CROSS - FARSI—

1 A. Correct.

2 Q. And, basically, can you tell the Court, are you -- you
3 are -- how does that work when you're hosting the email
4 system? What do you do for the client?

5 A. We have a database -- a datacenter in Lincoln, Nebraska,
6 as well as redundant datacenter in Scottsdale, Arizona where
7 we host the email, as well as provide services, such as,
8 cybersecurity, things of that nature.

9 Q. Okay. Well, the point of the -- by the way, how long has
10 Sandhills been in the email hosting business?

11 A. As long as I've been employed. So 15-plus years.

12 Q. Okay. Part of the email hosting system is to let clients
13 know that their privacy is going to be protected, right?

14 A. No, I don't think we've ever had that in any sales
15 material.

16 Q. So when you host someone's email, you're not telling them
17 that their emails are going -- they're going to be
18 protected -- their privacy is going to be protected?

19 A. No. In fact, one of the things that they like about it
20 is that if we need to recover emails for them, we're able to
21 do so.

22 Q. What would that have to do with any privacy issue?

23 A. Just that we can make -- we can go find emails that they
24 need to find.

25 Q. Okay. What does that have to do with privacy issues of

—WELCH - CROSS - FARSIU—

1 the client?

2 A. Nothing.

3 Q. You're hosting their system so they're giving you access
4 to it, right?

5 A. Yes.

6 Q. And you're hosting it for them, for their services, for
7 their benefit, right?

8 A. Yes.

9 Q. It's not for the benefit of Sandhills, right?

10 A. No.

11 Q. Okay. So when you say -- what I'm interested to know is
12 that when you say "you became aware in your certifications,"
13 you became aware -- the client didn't contact you and tell you
14 that they got an email from Mr. Garafola, did they?

15 A. No.

16 Q. What happened was Sandhills actually put a filter or
17 something to alert them when Mr. Garafola contacted them,
18 correct?

19 A. As a result of the ongoing investigation, we had filters
20 for any emails being sent from Larry Garafola to any of our
21 databases.

22 Q. Sir, does your -- do your clients know that?

23 A. I don't know that they don't know it. I can't speculate
24 on what they know and what they don't know.

25 Q. You testified earlier, I believe you said the email

—WELCH - CROSS - FARSIU—

1 hosting system, one of the reasons for doing that is for TRO
2 purposes.

3 Do you remember saying that?

4 A. We keep track of cybersecurity, so if there is any junk
5 mail that's coming through, any security attacks, this was
6 another example of something that we knew was in place and we
7 were monitoring for it.

8 Q. Sir, did Mr. Garafola pose a cyberthreat to the people
9 that you provided a certification on?

10 A. No.

11 Q. So you'd agree with me that Sandhills is filtering their
12 client's email address, email system, so that they, you,
13 Sandhills can be alerted as to whether or not Mr. Garafola or
14 even a competitor contacts them, right?

15 A. No. We knew -- we were monitoring for any emails coming
16 from him to anyone on our database. It wasn't that we were
17 monitoring customer email.

18 Q. Okay. But you can't do that, sir, unless you're hosting
19 that person's email address; isn't that correct?

20 A. Yes, correct.

21 Q. So, do your clients know that you're accessing that type
22 of information for your own purposes?

23 A. I can't speculate as to whether they know that or not.

24 Q. Okay. Well, you -- Sandhills filed a motion before
25 Judge Shipp saying that, oh, they violated the TRO again by

—WELCH - CROSS - FARSI—

1 contacting Mr. Enos, right?

2 A. Yes.

3 Q. And the reason you found that out -- or what you believe
4 to be a violation is because you were filtering your own
5 clients' email addresses, right?

6 A. We were monitoring all emails sent to our database.

7 Q. Sir, as you sit here under oath today, does Sandhills
8 have a filter or some type of system in place to alert them
9 when Mr. Garafola sends emails out?

10 A. We have a monitor when we receive emails from that email
11 address, yes.

12 Q. Okay. Your clients don't know that though, do they?

13 A. I can't speculate as to whether they know that or not.

14 Q. If I told you that Mr. Enos was appalled by the fact that
15 you had the emails that you submitted to the Court, do you
16 have anything to dispute that?

17 A. Nope.

18 Q. Were you aware that Mr. Enos was concerned about the fact
19 that he has his driver's license information, social security
20 information, and other personal information in their email
21 system that they didn't know that you had access to?

22 A. No. And again, we were only monitoring it for emails
23 sent from Mr. Garafola to Ms. Marlene Greene.

24 Q. But that's for Sandhills's own personal benefit, right?

25 A. It's also -- it's also for the Court's benefit.

—WELCH - CROSS - FARSIU—

1 Q. But it's not for your clients' benefit, is it?

2 A. I don't know.

3 Q. You don't know.

4 A. I can't speculate whether they think that's a benefit or
5 not.

6 Q. Did anyone tell you that that was legal to do?

7 A. Again, I'm not an attorney, so, I mean.

8 Q. We've established that. Did anyone tell you that that
9 was legal to do?

10 A. Nobody told me that it was illegal to do.

11 Q. Okay. So you think by telling a customer that we're
12 going to host your email address, we're going to provide you
13 with this great security of your emails, that it's okay to use
14 that email hosting system that you've promoted to this client
15 for your own personal -- Sandhills' own personal benefit; is
16 that what you're saying?

17 A. I think it's not illegal.

18 Q. Did anyone tell you that?

19 A. No.

20 Q. So as you sit here today, you don't have any idea whether
21 or not that's a violation, legal or unlawful or anything,
22 right?

23 A. No. Again, I'm not an attorney.

24 Q. And you want Judge Shipp to consider that evidence that
25 you believe demonstrates a violation, right?

—WELCH - CROSS - FARSIU—

1 A. Yes.

2 Q. Okay. And by the way, did you reach out to Mr. Enos to
3 let him know that you're doing this?

4 A. We did talk to him after the fact.

5 Q. What did Mr. Enos say to you?

6 A. He talked to his sales representative so it wasn't to me
7 directly.

8 Q. Well, his son runs the whole IT part of it, right?

9 A. I'm not sure on that.

10 Q. You don't know who Andrew Enos is?

11 A. No.

12 Q. Did you have any an conversations with Andrew Enos?

13 A. Me? No.

14 Q. Did anyone from Sandhills have a conversation with
15 Durable Undercarriage to see if it was okay that Sandhills put
16 a filter on their email for your purposes?

17 A. Not that I'm aware of.

18 Q. Now, with respect to -- by the way, does Sandhills have
19 the ability to monitor Mr. Garafola's personal email address?

20 A. His personal email address?

21 Q. Yeah.

22 A. If it's sent to our database, we can monitor what's
23 coming from that personal email address but not monitor his
24 personal email address, no.

25 Q. What about if Mr. -- what about if -- well, we already

—WELCH - CROSS - FARSIU—

1 know that -- I'm assuming that Sandhills put a filter on all
2 the email hosting systems that you provide for clients to
3 alert you if Mr. Garafola sends an email out to your client,
4 right?

5 A. It was on our email database in general, so it was on any
6 emails we would receive.

7 Q. But that's the filter system, right?

8 A. Monitoring for emails sent from that address.

9 Q. Right. And you're doing that through the hosting systems
10 that you have for your clients, right?

11 A. We host email, yes.

12 Q. Right. What about -- do you have the ability -- here's
13 the question. Do you have the ability to review
14 Mr. Garafola's email -- personal email if it's not connected
15 to any hosting system that you have for a client?

16 A. No.

17 Q. You can't access it through his Staples account?

18 A. Not that I'm aware of.

19 Q. Okay. So as far as you know, the only way you're
20 monitoring his email is by using a filter system for clients
21 that you host their email address for, correct?

22 A. Yes.

23 Q. Now, would you agree with me that when you, Sandhills,
24 went to the new software in April of 2019, the BidCaller --
25 and before I ask this question.

—WELCH - CROSS - FARSIU—

1 When you changed over to BidCaller, which is what you had
2 before, but Equipmentfacts wasn't using it, eventually what
3 happened was BidCaller was called Equipmentfacts, right? It
4 was a one-stop shop, right?

5 A. Eventually, BidCaller was the engine that ran
6 Equipmentfacts.

7 Q. Right. But you don't call it BidCaller?

8 A. We call it Equipmentfacts.

9 Q. Correct. Okay. Now, BidCaller was the system that you
10 had utilized prior to Mr. Garafola, right?

11 A. Yes.

12 Q. And when Mr. Garafola came over, you've already testified
13 that he was using Bidpath. So you guys used Bidpath, right?

14 A. Yes.

15 Q. And then you, for 10 months, learned from Mr. Garafola as
16 to how these live online auctions work and then you decided
17 we're going to go to the BidCaller software so that we don't
18 have to pay Bidpath, right?

19 A. The development started almost from day one on continuing
20 to build BidCaller into the software that we eventually felt
21 comfortable with replacing Bidpath.

22 Q. The answer to my question is, yeah, that's what happened
23 in April of 2019, we started using -- we went back to
24 BidCaller, right?

25 A. We went to BidCaller, yes.

—WELCH - CROSS - FARSIU—

1 Q. You went to BidCaller, that's correct. So, would you
2 agree with me, when you went to BidCaller, that you had
3 received several complaints and issues from clients as to the
4 technology wasn't working for them. It was confusing.

5 Do you remember that?

6 A. It was no different than any other rollout.

7 Q. The question I asked you, sir, was, do you remember
8 receiving and fielding complaints or learning of complaints
9 from other people, such as Mr. Garafola, of clients
10 complaining about the system?

11 A. Yes.

12 Q. Okay. And with respect to that, the manuals that you
13 were talking about -- now I haven't looked at the documents,
14 I'm going to look at them at some point, but the manuals that
15 you were talking about, those manuals were manuals that
16 pertained to the system under Bidpath, right?

17 A. Those manuals pertained to how to conduct an auction.
18 And a lot of that same knowledge was used in the production of
19 BidCaller.

20 Q. My question though, sir, is that those manuals were using
21 Bidpath? It was -- the manuals were made for the Bidpath
22 software technology, right?

23 A. It had to do with how to work with Bidpath but the same
24 can be used how to work with BidCaller.

25 Q. Would you agree with me that those manuals that you were

—WELCH - CROSS - FARSIU—

1 talking about that were in those emails, were being used by
2 Equipmentfacts using Bidpath's technology for the previous
3 year?

4 A. Yes, they were.

5 Q. Okay. Those manuals were in the possession of Bidpath,
6 were they not?

7 A. They were a copyright of Equipmentfacts.

8 Q. Did Bidpath have access to the manuals that you're
9 talking about?

10 A. I don't know.

11 Q. So you don't believe -- you just testified that the
12 manuals, as they were set up -- and when we talk about
13 manuals, we're talking about manuals that are discussing how
14 to use the technology for Equipmentfacts, right?

15 A. How to upload, how to do a lot of things around an
16 auction, yes.

17 Q. Right. And when you changed software, it would be
18 different from how Bidfacts -- Bidfacts would have been
19 using -- or Bidpath. I'm sorry. Bidpath would be using
20 the -- how Bidpath would interact with Equipmentfacts, right?

21 A. Repeat the question.

22 Q. Yeah. Equipmentfacts, those manuals, okay, pertain to
23 how to -- it says in there, how to do timed auctions, all to
24 do all these other auctions, pursuant to the Bidpath
25 technology, right?

—WELCH - CROSS - FARSIOU—

1 A. Yes.

2 Q. So Bidpath would have had these manuals because they were
3 the ones providing the technology for Equipmentfacts?

4 A. Again, I don't know that they would or wouldn't have.

5 Q. Okay. Now, at some point you needed to change the
6 manuals so that it coincided with the BidCaller software,
7 right?

8 A. Not necessarily.

9 Q. Well, sir, you testified that there were many problems
10 with the new software. You don't remember customers saying,
11 hey, this is confusing. I don't know how to use this?

12 A. I didn't testify that there was many problems with -- I
13 testified that, yes, we heard -- we received some complaints.

14 Q. Okay. Would you agree with me that the BidCaller
15 software, when you went over to it, needed to be fine-tuned
16 and it needed to be corrected at times?

17 A. Fine-tuned, yes.

18 Q. Because there were issues with the software, right?

19 A. Yes.

20 Q. Okay. And the Bidpath -- the Bidpath manuals would
21 actually -- they wouldn't even be any good anymore because
22 they would be under the Bidpath technology, right?

23 A. They actually still would be good. There is a lot of
24 components of that that we used with regard to BidCaller.

25 Q. Do you know who Carson Schott is?

—WELCH - CROSS - FARSIU—

1 A. Yes.

2 Q. Who is that?

3 A. He's a manager.

4 Q. Okay. Were you aware as to whether Carson Schott or
5 anybody else from Sandhills had indicated that the manuals had
6 to be changed so it coincided with the BidCaller software?

7 A. I'm not aware one way or the other.

8 Q. Let me ask you this, you wouldn't use the manuals that
9 had the Bidpath software if you're using BidCaller software,
10 right, it would be different?

11 A. Yes.

12 Q. The manuals would have to be changed, right?

13 A. Sure.

14 Q. Okay. Now, you talked about this email on July 7th of
15 2019. It's P-6, if you have it.

16 Now, I just want to understand something.

17 This email, is this -- are you saying -- strike that.

18 How did Sandhills get P-6?

19 A. That email was sent to Larry Garafola's
20 larry@equipmentfacts email address.

21 Q. Now, in the email, do you see -- you testified earlier
22 that this email was proof positive that Larry had started
23 another company and that he was leaving, right?

24 A. Proof positive that he was starting another company. I
25 don't know about leaving or not.

—WELCH - CROSS - FARSIU—

1 Q. Okay. Well, what did you think he was going to do work
2 for Sandhills and then go work for Bidfacts?

3 A. Yeah, frankly.

4 Q. How would he do that, sir?

5 A. I think his plan was to build up the Bidfacts -- have
6 Marlene and work with Marlene to build up Bidfacts until he
7 was comfortable enough to where it was far enough along that
8 he could move over to it.

9 Q. Okay. That's speculation, right?

10 A. Sure.

11 Q. Okay. That you feel comfortable speculating about,
12 right?

13 A. Given everything I've seen.

14 Q. Just remember you're under oath, right?

15 A. Yup.

16 Q. Okay. Now, do you see where the email is from -- well,
17 let's look at the first page. I'll use Mr. Miller's numbers.
18 It looks like Sandhills PI-70.

19 Do you see that that?

20 A. The first one, yes.

21 Q. You see where it says in the -- I guess it would be
22 considered the second email of the sheet. "Marlene, please
23 keep me posted on the feedback from your attorney," right?

24 A. Yes.

25 Q. And it says that up here in the paragraph before that, it

—WELCH - CROSS - FARSIU—

1 looks like David's talking about meeting with Larry, right?

2 A. Yes.

3 Q. Okay. There's nothing in these emails that says that

4 Larry is onboard, going to Bidfacts, right?

5 A. Again, I don't -- didn't testify that I thought he was
6 going to leave and go to Bidfacts.

7 Q. You didn't testify to that, sir?

8 A. No, I testified that he was starting a new business.

9 Q. Okay. So again -- so your testimony is that he was going
10 to just start the new business, stay on with Sandhills and do
11 both?

12 A. Yes.

13 Q. And now -- by the way, you never asked him that, did you?

14 A. I never had the chance to.

15 Q. Well, let's talk about that.

16 This is July 7th of 2019, right?

17 A. Yes.

18 Q. Now, there are no other emails that you have other than

19 P-6 where there's a discussion between Mr. Garafola,

20 Mr. Brindley -- I want to make sure I said his name right,

21 Mr. Brindley or Ms. Greene about going to Bidfacts. Bidfacts
22 is going to happen, right?

23 A. Right.

24 Q. This is your evidence right here, right?

25 A. This and Marlene's email to our bidder list.

—WELCH - CROSS - FARSIU—

1 Q. Okay. That email you're talking about, Larry Garafola is
2 not on that email, right?

3 A. Correct.

4 Q. Now, -- and, by the way, when you said you picked up the
5 computers, right, remember you said you went to New Jersey,
6 you picked up the computers, you were all concerned because
7 the manuals are being sent, right?

8 A. Yes.

9 Q. Okay. Now, you said that the computers had been wiped,
10 right?

11 A. Yes.

12 Q. Okay. Mr. Garafola's computer wasn't wiped, was it?

13 A. I don't know a terminology wiped. He deleted many
14 documents on the computer, yes.

15 Q. There were other computers that you had that were
16 completely wiped, is that what you're saying?

17 A. Yes.

18 Q. Was Mr. Garafola's computer completely wiped?

19 A. I don't know what you'd say was completely wiped, but
20 there were -- all documents were deleted off of it.

21 Q. Okay. Now, you told Mr. Garafola that you were going to
22 be in New Jersey because an electrician was coming to the
23 building, right?

24 A. That's not true.

25 THE COURT: Mr. Farsiou, we're going to take a short

—WELCH - CROSS - FARSIU—

1 break. It is 3:01. We're going to take a 10-minute break.
2 We'll resume about 3:12-ish. We're only going to go to
3 4 o'clock today, so be mindful.

4 MR. FARSIU: Okay. Thank you.

5 THE DEPUTY COURT CLERK: All rise.

6 (Court concludes at 3:01 p.m.)

7 THE DEPUTY COURT CLERK: All rise.

8 (Open court begins at 3:12 p.m.)

9 THE COURT: Please be seated.

10 Mr. Farsiou.

11 MR. FARSIU: I'm ready, Judge.

12 BY MR. FARSIU:

13 Q. I just want to backtrack a little bit.

14 You testified that you're utilizing the email hosting
15 systems that you provide to customers to alert Sandhills to
16 any communications from Mr. Garafola. Does that include his
17 IP address?

18 A. Not that I'm aware of.

19 Q. Do you know what I mean by that?

20 A. Not exactly.

21 Q. Okay. IP address means that you can know the physical
22 location of someone.

23 Did you know whether or not if you're monitoring an email
24 or doing an email hosting system for a client, if you can
25 determine the IP address?

—WELCH - CROSS - FARSIU—

1 A. I don't know on that.

2 Q. Okay. And when you do the email hosting system, I'm
3 assuming it's the whole system. Anything that has to do with
4 the emails you're doing, right?

5 A. Can you be more specific?

6 Q. Well, you're providing the system for them. You're doing
7 the cyberthreats for them. And I'm assuming when you have
8 cyberthreats, you need to know certain IP addresses to see
9 where it's coming from, right, or you don't know?

10 A. I'm not sure on that.

11 Q. Okay. And just to get off of this subject. The email
12 hosting system is, for example, a client wouldn't use another
13 company for an email hosting system. They would use
14 Sandhills, if that's who they have a contract with, right?

15 A. We don't have any contracts.

16 Q. You have agreements?

17 A. No.

18 Q. You have no agreements?

19 A. Not with regards to email.

20 Q. So if Durable Undercarriage is having Sandhills use -- or
21 they're using Sandhills' email hosting system, there's no
22 agreement in place?

23 A. Simply to host their email?

24 Q. Yeah.

25 A. No.

—WELCH - CROSS - FARSIU—

1 Q. When you say "simply to host their email," what do you
2 mean by that?

3 A. We don't have a user email with regards to hosted email.

4 Q. Okay. With respect to that, though, you're able to
5 monitor the emails that come in and out and who they come
6 from, right?

7 A. We are able to -- we are able to see emails that came in
8 from the email addresses that we're monitoring.

9 Q. Right. And you're monitoring them for Sandhills'
10 purposes, right?

11 A. We're monitoring them for many purposes.

12 Q. Sir, I want to get off this topic, okay, but you're not
13 going to testify under oath here today that you're monitoring
14 Mr. Garafola's email addresses for someone else's benefit,
15 right?

16 A. No.

17 Q. Okay. You're doing it for Sandhills' benefit, right?

18 A. I don't know -- yeah, sure.

19 Q. Did Mike Enos say to you, hey, I need to know when Larry
20 is emailing anybody. Did he say that?

21 A. No. No.

22 Q. Now, we were talking about P-6, okay.

23 And P-6, again, is the only communication that you have
24 that Sandhills has that alerted them that, oh, my God, there's
25 another company that Larry's trying to create, right?

—WELCH - CROSS - FARSIU—

1 A. Yes.

2 Q. Okay. Now, by the way, on January -- I'm sorry, July 7th
3 of 2019, this email, that's the date of the email. Do you
4 remember when you became aware or Sandhills became aware of
5 this email?

6 A. August 2nd, maybe.

7 Q. That's when you found this email?

8 A. Yes.

9 Q. And did anyone go to Larry and say, hey, Larry, we got to
10 talk. I want to find out what's going on?

11 A. No.

12 Q. And, by the way, Larry, obviously, you paid \$1.5 million
13 for Equipmentfacts, right?

14 A. Yes.

15 Q. Okay. And Larry was important to Sandhills, right?

16 A. Yes.

17 Q. You wanted to get Equipmentfacts because they were the --
18 I believe you said that Equipmentfacts was the pioneer of
19 online auction services, right?

20 A. Yes.

21 Q. Okay. And you wanted Larry to come onboard because he
22 had the expertise, right?

23 A. Yes.

24 Q. Okay. You didn't want to see him go somewhere else, did
25 you?

—WELCH - CROSS - FARSIU—

1 A. No.

2 Q. How come you didn't go to Larry and find out what was
3 going on?

4 A. Because at that time I was more concerned about
5 protecting our intellectual property. So if I would have went
6 to Larry and alerted him, then I'd be afraid that all of our
7 intellectual property would get raided and go out the door.

8 Q. Well, you would have also found out that Larry, a few
9 weeks prior, would have told Mr. Brindley that he couldn't do
10 business with him, right?

11 A. I would not of, no.

12 Q. Well, you didn't ask him, right?

13 A. No.

14 Q. So, as far as you know, you don't know what Larry was
15 doing as of -- in July 8th, 9th, the time after that, all the
16 way up to the time that you terminated him on August 7th,
17 right?

18 A. I know that I have an email talking about setting up this
19 new business, Bidfacts, LLC, and then I know I had a mass
20 exodus of all of our intellectual property.

21 Q. Well, again, if Larry would have said to Mr. Brindley, I
22 can't do this; I need to focus on my job here; I'm not going
23 to be able to do this, he would be doing work for Sandhills,
24 wouldn't he?

25 A. You're asking me to speculate on that?

—WELCH - CROSS - FARSIU—

1 Q. I am.

2 A. I'm not going to speculate on that.

3 Q. But you're okay speculating with that, he was already
4 gone and he was using this, he was downloading this property
5 of Sandhills for improper purposes, right? You speculated to
6 that?

7 A. I'm pretty comfortable in reading this email and the talk
8 of seeing an attorney about setting up a competing business,
9 I'm very confident that, yes, he was, in fact, setting up a
10 competing business.

11 Q. Well, as of August 2nd, did Larry do any work with
12 Bidfacts?

13 A. I don't know.

14 Q. Okay. You don't have any evidence, right?

15 A. I have this email.

16 Q. Okay. That's the email, right? By the way, you already
17 testified this email doesn't say that this is a done deal,
18 right?

19 A. It says Bidfacts, LLC is in place as of July 3rd, so I
20 don't know what you mean by done deal but it looks like an LLC
21 has been formed.

22 Q. Not by Mr. Garafola?

23 A. He's certainly involved.

24 Q. Sir, does this email tell you that Mr. Garafola started
25 and created Bidfacts?

—WELCH - CROSS - FARSI—

1 A. I feel like it does.

2 Q. It does. Where does it say it? Tell me where it says
3 it?

4 A. He talks about how he had conversations with his attorney
5 and he's fine to compete with AuctionTime. Marlene even
6 refers to him as boss. And then, in turn, they set up a
7 Bidfacts, LLC, David Brindley does.

8 Q. Okay. So the answer to my question is David Brindley set
9 up Bidfacts, LLC, right?

10 A. Yes, it looks like, at the urging of Mr. Garafola.

11 Q. Where does it say that?

12 A. It talks about how he saw an attorney and that he's okay
13 to compete with AuctionTime.

14 Q. Okay. Well, Mr. Garafola is going to testify that
15 there's a word missing in that sentence, okay. But do you see
16 anything in here where Mr. Garafola says that, "I am" or "he
17 is a part of the ownership of Bidfacts"?

18 A. It's certainly insinuated.

19 Q. Okay. Well, we don't know because you never talked to
20 Mr. Garafola about it, right?

21 A. No.

22 Q. And you don't know that soon thereafter, this email,
23 Mr. Garafola didn't even meet with Mr. Brindley.

24 Are you aware of that?

25 A. I'm not aware if he did or didn't.

—WELCH - CROSS - FARSIU—

1 Q. Okay. Well, if I told you that he had didn't meet with
2 Mr. Brindley about Bidfacts, you'd have no evidence, as you
3 sit here today, in front of this Court, on this preliminary
4 injunction hearing, to prove me otherwise, right?

5 A. Again, I feel like there's ample evidence of the setting
6 up of the business and the raiding of Sandhills' intellectual
7 property.

8 Q. Again, sir, the intellectual property, the manuals, those
9 manuals had to be changed because you were going to a
10 different software package, right?

11 A. The manuals is just one tiny aspect of all the data that
12 was exported out of our systems.

13 Q. Sir, you do realize that -- I'm not going to get into it.
14 You already talked about the issues.

15 Now, do you know, as you sit here today, you have no idea
16 if Mr. Garafola was performing services for Sandhills and not
17 Bidfacts, right?

18 A. I don't know.

19 Q. You don't know that because you didn't ask him, right?

20 A. No.

21 Q. And by the way, the emails that you provided, I didn't
22 look through them yet. I see that you just have the
23 forwarding and the attachments.

24 Are you aware -- weren't there emails in between there
25 from Mr. Shot to Mr. Garafola?

—WELCH - CROSS - FARSIU—

- 1 A. I'm not aware if there were or weren't.
- 2 Q. These emails were picked out by who?
- 3 A. Which emails are we referring to?
- 4 Q. The emails -- well, the 596 pages that were provided to
- 5 me yesterday, who went through these and said, okay, these are
- 6 the documents that we're going to provide?
- 7 A. I did for most of them, I would say.
- 8 Q. Okay. Are there other emails that relate to the emails
- 9 that you provided in here?
- 10 A. I'm not sure.
- 11 Q. So you have no idea -- remember the email you talked
- 12 about it says the top 500 or whatever, what was the email you
- 13 talked about?
- 14 A. The top bidder list? The top 500 bidders?
- 15 Q. Yes?
- 16 A. Yes.
- 17 Q. Are you aware as to whether or not Mr. Shot had asked
- 18 Mr. Garafola to provide him with the list of the top 200?
- 19 A. We use that internally, absolutely, as a marketing
- 20 material. We would never allow for that to be sent out
- 21 externally.
- 22 Q. Sir, do you know whether or not Mr. Shot had asked
- 23 Mr. Garafola to provide a list of top 200?
- 24 A. I don't know.
- 25 Q. Okay. So you did not -- Sandhills didn't look for emails

—WELCH - CROSS - FARSIU—

1 that pertained to the emails that you provided in here, right?

2 MR. MILLER: Objection.

3 THE COURT: What's the objection?

4 MR. MILLER: "You didn't provide emails to the emails
5 that were provided." It's circular. Actually, there's no
6 point to the question.

7 THE COURT: If you can understand the question, you
8 can answer it.

9 THE WITNESS: I don't know what you mean by that.

10 Q. Okay. You understand that these documents were -- they
11 were picked out, right? You guys decided what emails you were
12 going to provide. You already testified to that, right?

13 A. I mean, yeah.

14 Q. Okay. And did you look to see if there were other emails
15 in between these dates, before these dates, or after these
16 dates, where Mr. Garafola was asked to provide certain
17 information to certain Sandhills' people?

18 A. We looked at emails to and from Larry throughout that
19 time period.

20 Q. Okay. So the answer to my question is no?

21 A. I'm not understanding your question.

22 Q. Did you look for any emails wherein someone from
23 Sandhills requested Mr. Garafola to provide them information,
24 for example, about top bidders?

25 A. I'm not aware of that.

—WELCH - CROSS - FARSIU—

1 Q. Okay. Did you look for it?

2 A. I don't know what reason I would have -- no, I don't -- I
3 don't remember whether we did or didn't.

4 Q. Okay. There would be a big reason, sir, because he could
5 have been doing that because he was asked to get that
6 information. Is that funny? Is that funny to you, sir?

7 A. I mean, yeah, frankly.

8 Q. Okay. Well, you know what. I think we can agree.
9 You're right. This is funny.

10 Now, with respect to Mr. Garafola, again, you are --
11 again, this is the area you like to speculate in. You're
12 speculating that he was using this information for improper
13 purposes, right?

14 A. Yes.

15 Q. Okay. And again, you never asked him, you never asked
16 him what he was doing with the information? You never
17 confronted him? You have no idea if he was doing work for
18 Sandhills, right?

19 A. Nope.

20 Q. And you guys just said, we're firing him, right?

21 A. Upon further investigation, yes.

22 Q. Well, further investigation of the emails that you talked
23 about, right?

24 A. Yes.

25 Q. Okay. And again, never talked to him about what he was

—WELCH - CROSS - FARSIU—

1 doing, why he was doing it? You didn't look for emails that
2 indicated what he was doing either, right?

3 A. No.

4 Q. And with respect to that, you, then, Sandhills,
5 terminated Mr. Garafola, right?

6 A. Yes, for breach of duty of loyalty.

7 Q. That's your opinion, right?

8 A. Yes, absolutely.

9 Q. Sir, I understand that your attorney keeps shaking his
10 head. You have to answer the question. You can't follow what
11 your attorney is telling you.

12 MR. MILLER: Judge, I'm going to object to that
13 insinuation.

14 MR. FARSIU: I'm watching him, John. He's been
15 doing it the whole time.

16 THE COURT: Okay. Counsel, it's okay. You can
17 proceed.

18 BY MR. FARSIU:

19 Q. You understand that you guys, Sandhills, fired
20 Mr. Garafola?

21 A. Yes.

22 Q. And it was all under the assumption that he had started a
23 new company with Mr. Brindley and Ms. Greene, right?

24 A. Yes.

25 Q. But you had no proof that that actually happened other

—WELCH - CROSS - FARSIU—

1 than the July 7th email?

2 A. I feel like there's -- again, I feel like there's ample
3 proof.

4 Q. Sir, I'll give you the benefit of the doubt. July 7th
5 email and the other emails that you guys cherry-picked to show
6 that these manuals were being provided or forwarded to an
7 email address, right?

8 A. Yes.

9 Q. Anything else?

10 A. No.

11 Q. And again, just so I'm clear. You never asked, you never
12 looked for other emails? This is your speculation as to what
13 was happening, right?

14 A. Correct.

15 Q. And as you testified earlier today, your testimony is
16 that it's hard to know what the reputational damage is, but we
17 lost Permian and we lost -- I'm sorry, the other one was
18 Superior Auctions, right?

19 A. Yes.

20 Q. And you are speculating that Superior did business with
21 Mr. Garafola, correct?

22 A. Yes.

23 Q. If I told you that Superior never has done business with
24 Mr. Garafola, do you have anything to dispute that?

25 A. No.

—WELCH - CROSS - FARSIU—

1 Q. Okay. So then, we're talking about one client, Permian,
2 right?

3 A. With regards to doing business with?

4 He also did business with several others.

5 Q. Sir, you testified you lost two clients, right?

6 A. Yes.

7 Q. Now, I've told you that one of the clients that you claim
8 you lost because of Mr. Garafola didn't even do business with
9 Mr. Garafola, right?

10 MR. MILLER: Objection. He's testifying.

11 MR. FARSIU: Judge, please.

12 THE COURT: Overruled. I'm giving both sides wide
13 latitude here. Both sides. So, please, just be on notice.

14 BY MR. FARSIU:

15 Q. Right, you agree with me -- if I told you -- you don't
16 have any evidence that Superior actually did business with
17 Mr. Garafola, right?

18 A. Superior, no.

19 Q. And Mr. Dyess, hopefully, will be providing testimony.
20 But your position is that you lost Permian because of him,
21 right?

22 A. Yes.

23 Q. Now, is it your testimony that Permian left
24 Equipmentfacts and went directly to Mr. Garafola?

25 A. No.

—WELCH - CROSS - FARSI—

1 Q. Okay. You're aware that they went to somewhere else,
2 right?

3 A. Yeah.

4 Q. Where did they go?

5 A. Proxibid as well.

6 Q. Okay. So that wasn't because of Mr. Garafola, was it?

7 A. I would argue it was.

8 Q. That's you speculating again, right?

9 A. Sure.

10 Q. Well, it's not sure, it's yes, right?

11 A. Yes.

12 Q. You didn't have a conversation with Mr. Dyess, right?

13 A. No.

14 Q. In fact, when Mr. Dyess provided a certification, either
15 you or someone from Sandhills had been hounding him with phone
16 calls, right?

17 A. I'm not sure on that.

18 Q. Did you reach out to him?

19 A. Yes.

20 Q. Did you talk to him?

21 A. Yes.

22 Q. What did he say to you?

23 A. That he wasn't happy with Sandhills.

24 Q. Did he tell you he left Sandhills because of
25 Mr. Garafola?

—WELCH - CROSS - FARSIU—

1 A. No.

2 Q. He said that he was unhappy with Sandhills, and he
3 thought the technology wasn't good. Didn't he say that to
4 you?

5 A. He didn't say the technology wasn't good.

6 Q. Did he say it was confusing?

7 A. No.

8 Q. You didn't ask him what the problem was?

9 A. That's going back six months. I don't -- I can't say I
10 know exactly how the conversation went word-for-word.

11 Q. I wouldn't want you to speculate on what you think
12 happened six months ago.

13 You'd agree with me, though, Mr. Dyess at no point told
14 you, yeah, we left Sandhills because of Mr. Garafola, right?

15 A. No.

16 Q. So, out of what you testified as to the damages because
17 that's what a preliminary injunction is about, it's not about
18 money. It's about harm to the reputation and all of that.

19 You have no other evidence to provide to this Court with any
20 irreparable harm that you know of, correct?

21 A. It's very difficult to quantify the amount of irreparable
22 harm that could have been done.

23 Q. Is Sandhills making money?

24 A. Yes.

25 Q. Okay. And no one has come to you -- no one has come to

—WELCH - CROSS - FARSIU—

1 you, or anybody at Sandhills and said, hey, I don't know
2 what's going on over there but Mr. Garafola said this and I
3 think that you guys stink now, right? No one said that to
4 you?

5 A. No.

6 Q. No one said, hey, Sandhills is a bad company because
7 Mr. Garafola left or said something about Sandhills, right?

8 A. I can't speculate whether he said that or not. Nobody
9 has come to me and said that, no.

10 Q. You have no evidence to support anybody saying to you or
11 telling you that your reputation has been damaged because of
12 Mr. Garafola, correct?

13 A. Correct.

14 Q. Do you remember when Permian left Sandhills?

15 A. No.

16 Q. If I told you it was June 20, 2019, does that ring a
17 bell?

18 A. That's probably about right.

19 Q. Now, Mr. Garafola was still employed with Sandhills,
20 right?

21 A. Yes.

22 Q. And again, you don't have -- Mr. Dyess never said to you
23 that they left because was Mr. Garafola, right?

24 A. No.

25 Q. Now, with respect to the live auctions that Mr. Garafola

—WELCH - CROSS - FARSIU—

1 was performing for Equipmentfacts, I want to make sure that I
2 understand what your testimony is.

3 Are you saying -- and I guess it would be a good point
4 is -- why don't you pull up or pull out, if you look at P-2,
5 P-3, and you might as well pull out P-4.

6 P-2 is what we have been calling the APA or the Asset
7 Purchase Agreement, right?

8 A. Yes.

9 Q. Who prepared this document?

10 A. Our attorneys.

11 Q. Now, just so it's clear, you had no involvement in the
12 preparation of this document?

13 A. In what regard?

14 Q. Well, you said -- I just asked you a question who
15 prepared it? You said "our attorneys," right?

16 A. Yes.

17 Q. You didn't prepare this document in any way, shape, or
18 form?

19 A. No, I gave feedback.

20 Q. What feedback did you give with respect to the APA?

21 A. I can't say I recall a specific point.

22 Q. Okay. So, with respect to the APA, you testified that
23 there was a requirement that there that was going to be what I
24 think you called a non-competition, non-interference, and
25 confidentiality agreement, right?

—WELCH - CROSS - FARSI—

1 A. Non-compete as well, yes.

2 Q. Well, isn't P-3 -- isn't P-3 labeled non-competition,
3 non-interference, and confidentiality agreement. Do you have
4 that up there?

5 A. I got so many. Just a second. I'm not finding P-3.

6 Q. Is it up there?

7 A. I found it. We're good.

8 Q. This is what applies to the Asset Purchase Agreement,
9 right?

10 A. Yes.

11 Q. You would agree with me that this provision is different
12 than the Employment Agreement?

13 A. Yes.

14 Q. Now, when you -- did you or anybody from Sandhills tell
15 Mr. Garafola that, hey listen, we want you to come to
16 Sandhills. We want you to run Equipmentfacts. You're going
17 to stay in the same location. You're going to keep all your
18 people employed, and you're going to run Equipmentfacts as if
19 it never changed over, right?

20 A. We -- yeah. I mean, for the most part, yeah.

21 Q. They were in New Jersey, right?

22 A. Yes.

23 Q. Okay. They have the same building?

24 A. Yes.

25 Q. In fact, Sandhills was paying rent to a company that

—WELCH - CROSS - FARSIU—

1 Mr. Garafola owned, right?

2 A. Correct.

3 Q. And he kept all his employees, right?

4 A. Yes.

5 Q. Okay. Now -- so the only thing that was going to be
6 different is that Sandhills was going to provide more support,
7 more advertising, more marketing, right?

8 A. Yeah. There's always going to be changes, but, yes, that
9 was --

10 Q. The whole point was that Sandhills needed to get better
11 in the live auction industry and that's why you wanted
12 Equipmentfacts and specifically the Equipmentfacts that
13 Mr. Garafola had created and founded and had run for 19 years,
14 right?

15 A. Yes, we wanted to improve upon it, but, yes.

16 Q. Well, you certainly didn't buy Equipmentfacts because you
17 guys were doing so well in the live auction industry, right?

18 A. No.

19 Q. Okay. In fact, there were issues with BidCaller, right?

20 A. I -- generally, I don't know. I guess.

21 Q. Let me ask you this. Was BidCaller just as good as
22 Equipmentfacts?

23 A. No.

24 Q. And Equipmentfacts was using Bidpath, right?

25 A. Yes.

—WELCH - CROSS - FARSIU—

1 Q. And Bidpath seemed to be doing a pretty good job for
2 Equipmentfacts, right?

3 A. Yes.

4 Q. In fact, when they came over, nothing changed? You guys
5 said, look, we're not going to use BidCaller. Equipmentfacts
6 will go with Bidpath, right?

7 A. Yes.

8 Q. Okay. Now, that had to do with online auction services,
9 right?

10 A. What had to do with online?

11 Q. That's what he was running Equipmentfacts? That's the
12 business?

13 A. Yes.

14 Q. Okay. Mr. Garafola -- and I want to make sure that I'm
15 clear. Mr. Garafola wasn't selling software licenses and then
16 saying, hey, go do what you want, right?

17 A. It's again an online bidding services.

18 Q. There's a specific difference between someone who sells a
19 license for software packages and tells someone, hey, go do
20 what you need to do. Tells an auctioneer, hey, here's your
21 software, do whatever you want to do. You want to take it to
22 Sandhills, take it to Sandhills, right?

23 A. I don't see the difference other than the way they're
24 charging.

25 Q. You don't see the difference?

—WELCH - CROSS - FARSIU—

1 A. No. They're both providing online bidding services.

2 Q. No. So Sandhills was providing online auction services
3 when -- and again, I'm going to say, it's like a one-stop
4 shop. They use their software. They get the bidders, right?

5 That's a bid -- you'd agree with me that one of the
6 attractions for auctioneers is for the company -- the online
7 auction company to provide bidders to the auction, right?

8 A. The online auction company to provide bidders to the
9 company? I'm not sure I'm following that line of questioning?

10 Q. Okay. When Equipmentfacts does an online auction for
11 someone?

12 A. Yes.

13 Q. Okay. Don't they say to them, hey, don't they provide
14 services such as, okay, we're going to get -- we have all
15 these bidders that we know. We're going to get them. We're
16 going to advertise this and we're going to get it out to them,
17 and we're going to bring more bidders to your auction, right?

18 A. We provide -- that's part of the service we provide, yes.

19 Q. That's the most important aspect of the online auction
20 business, right?

21 A. I would not agree with that.

22 Q. So you don't think the bidders who actually buy the
23 product is the most important thing in an online auction?

24 A. I don't get -- the software is just as important.

25 Q. Okay. But Equipmentfacts is running the software,

—WELCH - CROSS - FARSIU—

1 getting the bidders, right? Doing the advertising and doing
2 the marketing, correct?

3 A. Not always. In some cases, our customer is running the
4 software.

5 Q. Okay. But you're providing the bidders, right?

6 A. Not -- not -- they're also providing the bidders as well,
7 the customer does as well.

8 Q. Okay. Sir, do you see the difference between just
9 providing a software license and walking away?

10 A. No. I see one as -- one, what they're doing is just
11 providing a component of what we do. It's no different.

12 Q. Mr. Garafola never did that when he was at Sandhills;
13 isn't that correct?

14 A. Never did what?

15 Q. He never just provided a software license and walked
16 away, right?

17 A. No, we chose not to charge that way.

18 Q. That's not what you hired him to do, right? You didn't
19 hire Mr. Garafola to license software and then walk away? You
20 wanted him to run the auctions?

21 A. We hired him to help sell online auction services. No
22 different than what he's doing today.

23 Q. Well, no, you hired him for the heavy truck and machinery
24 equipment, right?

25 A. And related industries.

—WELCH - CROSS - FARSIU—

1 Q. So I just want to make sure that I'm clear so that the
2 judge understands too. The related industries is anything to
3 do with online auctions?

4 A. It's online auction services and related industries.

5 Q. Sir, do you know what that means?

6 A. Yes.

7 Q. Okay. What tell me what it means?

8 A. It's industries related to the industries laid out in the
9 agreement.

10 Q. What's laid out in the agreement, what industries?

11 A. The construction and truck.

12 Q. Well, if construction and truck -- well, that's what
13 Equipmentfacts did, right?

14 A. Part of, yes.

15 Q. Well, no. When Larry, Mr. Garafola, was purchased,
16 that's what they did?

17 A. They'd also done other types of auctions as well.

18 Q. How do you know that?

19 A. I kept track of him. I've been in the business for 15
20 years. I've seen what he's done.

21 Q. Okay. You testified earlier that Sandhills wanted to get
22 better in that area, right?

23 A. Yes.

24 Q. Okay. That's why you purchased Equipmentfacts, right?

25 A. One of the reasons, yes.

—WELCH - CROSS - FARSIU—

1 Q. Well, you also wanted to learn from Mr. Garafola on how
2 to be better in the live auctions, right?

3 A. Yes.

4 Q. And when you learned all of that information from him in
5 and around April or May of 2019, you'd agree with me that you
6 started to strip some of the duties away from him, right?

7 A. No.

8 Q. You didn't change his title?

9 A. No.

10 Q. Okay. Well, let me ask you this. If you did, if you
11 changed his duties or changed his title, you'd agree with me
12 that that would have been a violation of the Employment
13 Agreement, right?

14 MR. MILLER: Objection, speculation.

15 THE COURT: Repeat the question, Counsel.

16 MR. FARSIU: Sure.

17 Q. If Sandhills had changed Mr. Garafola -- unilaterally
18 changed Mr. Garafola's title or his duties that would have
19 been a violation of the Employment Agreement, right?

20 THE COURT: You can answer that question.

21 THE WITNESS: I'd have to see where that would be --
22 where you're referencing that from?

23 Q. I believe the document in front of you is -- I want to
24 say D-1.

25 A. P-3.

—WELCH - CROSS - FARSIU—

1 Q. D-1.

2 A. D-1, I'm sorry.

3 Q. Now, I got to find mine. Do you have it in front of you?

4 A. I have D-1, the Employment Agreement.

5 Q. Let's go to page 2.

6 A. Okay.

7 Q. Do you see where it says "duties and responsibilities,"

8 Number 3?

9 A. Yes.

10 Q. Do you see where it says "Garafola shall be employed in
11 the position of manager of auction services," right?

12 A. Yes.

13 Q. Now, let's just stop right there real quick.

14 Auction services for Mr. Garafola was running
15 Equipmentfacts as he did prior to coming to Sandhills, right?

16 A. Yes. But there's always going to be business changes
17 that happen along the way.

18 Q. Okay. But you said that the heavy equipment and
19 machinery -- you said that that's different than the
20 construction and agriculture industry, right? You said that
21 was different?

22 A. Wait. Where did I say that?

23 Q. Well, you testified earlier that -- let me ask you this.
24 Are you saying -- is it your testimony that the heavy truck
25 and machinery and the construction and agricultural industries

—WELCH - CROSS - FARSIU—

1 encompasses everything?

2 A. In --

3 Q. In auctions that you're running for Sandhills?

4 A. I'm not testifying to that, no.

5 Q. You remember testifying earlier about -- I believe it was
6 Machinery Facts?

7 A. MachineFacts, yes.

8 Q. What's the one that Sandhills runs?

9 A. Oh, Machinery Trader.

10 Q. Machinery Trader. Now, MachineFacts was something that
11 Mr. Garafola had brought up to you guys in 2019, right?

12 A. Yes.

13 Q. And Sandhills didn't want to do that, did they?

14 A. That's not correct.

15 Q. Okay. Well, you didn't sue Mr. Garafola because he's
16 using MachineFacts, the term "MachineFacts," right?

17 A. We did among others, yes.

18 Q. You did?

19 A. Yeah.

20 Q. Do you own the domain of MachineFacts?

21 A. We don't own the domain of MachineFacts.

22 Q. Well, why didn't you -- if you don't own it, you
23 certainly didn't purchase that from Mr. Garafola, right?

24 A. I don't know whether we did or didn't. If that was a
25 pre-acquisition or not.

—WELCH - CROSS - FARSIU—

1 Q. Well, if you did, and Mr. Garafola was actually doing
2 that service while he was working for Sandhills, you would
3 be -- part of your application would have been he can't use
4 the words or the term "MachineFacts," right?

5 A. We put that on there as a competing brand.

6 Q. As a competing brand?

7 A. Yes.

8 Q. But you didn't say the brand was owned by Sandhills,
9 right?

10 A. The brand MachineFacts?

11 Q. Yeah.

12 A. No, we didn't say that.

13 Q. Okay. Now, let's go to the next part of that sentence.
14 It says "Or such other position as mutually agreed upon by
15 Garafola and the company," right?

16 A. Yes.

17 Q. So my question to you was, if you changed Mr. Garafola's
18 position unilaterally, that would be a violation of the
19 Employment Agreement?

20 A. I'm not sure if that would or wouldn't. I guess. I'm
21 not an attorney but...

22 Q. Do you want to speculate as to whether or not that would
23 be a violation?

24 A. No.

25 Q. Okay. I want to just go back to one last thing about

—WELCH - CROSS - FARSIU—

1 this belief that Mr. Garafola was starting this new business
2 in July. And you said part of the evidence, besides the email
3 of July 7th, was the fact that he had all these manuals being
4 sent to him and the bidder list and things like that, right?

5 A. Yes.

6 Q. And again, those materials would have been the materials
7 that would have been utilized by Bidpath for Equipmentfacts,
8 right?

9 A. It would have been utilized by Equipmentfacts in
10 conjunction with Bidpath.

11 Q. That's fair. You'd agree with me that those manuals that
12 were emailed to Mr. Garafola would have already been in the
13 possession of Bidfacts?

14 A. I'm not sure on that. They were copyright of
15 Equipmentfacts so I have no evidence that they were in
16 Bidpath's hands.

17 Q. So you have no idea if the software company that's
18 running Equipmentfacts would be entitled to the manuals that
19 are telling people how to use the software?

20 A. I have no idea. Those were created by Equipmentfacts.

21 Q. Okay. Do you know whether or not Bidfacts had anything
22 to do with those manuals, in preparation of the manuals?

23 A. No.

24 Q. And those were the manuals that I believe you testified
25 from Mr. Miller's questions that -- those are the manuals that

—WELCH - CROSS - FARSIU—

1 were created by Equipmentfacts prior to the purchase?

2 A. Yes.

3 Q. And with respect to prior to the purchase, again, Bidpath
4 would have been the software company that Equipmentfacts was
5 using, right?

6 A. Yes, among others. Yes.

7 Q. Now, I want you to go to -- I want you to go back to the
8 document I believe that has been labeled as P-4.

9 A. Is it the employee intellectual property?

10 Q. Correct?

11 A. Yes.

12 Q. Would you agree with me that -- I believe you testified
13 already, but P-4 is the document that would go along with the
14 Employment Agreement, right?

15 A. Yes.

16 Q. Okay. Now, with respect to P-4, if you go to -- I want
17 you to go to page 3. And that's the -- I want you to go to
18 paragraph -- or Section 5 states, excuse me, non-competition,
19 correct?

20 A. Yes.

21 Q. Now, this restricted business is defined here, isn't it?

22 A. I have to read through it. Yes.

23 Q. And if we -- I'd like you to read into the record,
24 slowly, the section that at the very bottom of page 3 in the
25 bottom right column where it starts with quotations

—WELCH - CROSS - FARSIU—

1 "restricted area."

2 Could you read that into the record?

3 A. "Restricted area means each State, within the United
4 States, in which the company or Equipmentfacts has engaged in
5 the restricted business during the 24-month period prior to
6 the termination date. And restricted business means the
7 business of providing an online auction platform or online
8 auction services for the purpose of facilitating the sale of
9 equipment or machinery that is used in the agriculture or
10 construction industries in a manner that competes with the
11 company."

12 Q. Okay. So am I correct that this provision, specifically
13 limits the business being the sale of equipment or machinery
14 that is used in the agriculture or construction industries
15 that competes with the company?

16 A. With regards to the Employment Agreement?

17 Q. Yes.

18 A. Yes.

19 Q. Okay. Now, based on this agreement alone, could
20 Mr. Garafola go out and sell a software license for the oil
21 field industry?

22 A. No.

23 Q. Okay. Could Mr. Garafola go out and sell any software
24 license? And what I mean by that is just simply license the
25 software and not do anything with it?

—WELCH - CROSS - FARSIU—

1 A. Is the software auction software?

2 Q. It would be a software package that the auctioneer could
3 use for auction purposes?

4 A. No.

5 Q. Okay. Based on this -- and I know that you're not an
6 attorney. Is there anything Mr. Garafola can do in the
7 auction -- in the auction business?

8 A. I'm not going to speculate on what he can or can't do.

9 Q. Okay. So based on this definition, you don't know?
10 You'd have to speculate?

11 A. Yeah, I'd have to speculate.

12 Q. All right. Now, if you go to -- I'm sorry. Hold on a
13 second.

14 Were there any discussions with Mr. Garafola about the
15 necessity to limit what the restricting business was going to
16 be?

17 A. I can't recall whether there was or wasn't.

18 Q. You don't recall Mr. Garafola having a concern that the
19 non-compete being overly broad or outside of areas that he
20 didn't do work in?

21 A. I don't recall that.

22 Q. Okay. And with respect to that, you don't recall that
23 that conversation led to the language that we just spoke
24 about?

25 A. I don't recall.

—WELCH - CROSS - FARSIU—

1 Q. And if you go to the next page, if you look at Number 6.
2 And I know that Mr. Miller asked you some questions about
3 this, but if you look -- Number 6 is no solicitation of
4 employees or customers. Your issue -- Sandhills' issue is
5 with customers, right?

6 A. I mean, we would take issue if it was with employees as
7 well, but customers is the issue at hand.

8 Q. Okay. What I mean by that is you don't have any evidence
9 to tell this Court that Mr. Garafola was soliciting employees?

10 A. Not that I'm aware of.

11 Q. Everybody that worked in New Jersey was fired, right?

12 A. Yes.

13 Q. You guys -- I think either you or someone from Sandhills
14 showed up, right?

15 A. Yes.

16 Q. And said, hey guys, you're fired?

17 A. Yes.

18 Q. Okay. And no questions asked, just fired everybody?

19 A. We put them on suspension until further investigation and
20 then ultimately, yes, we dismissed them.

21 Q. Okay. When was that?

22 A. The suspension I believe was on August 5th. It was a
23 Monday.

24 Q. And what was the additional investigation that was done?

25 A. We went out there and retrieved all the hardware from the

—WELCH - CROSS - FARSIU—

1 employees.

2 Q. You took all the laptops, right?

3 A. Yes.

4 Q. You took all the cell phones?

5 A. Yes, correct.

6 Q. And you took -- the same thing that you took from them,
7 you took from Mr. Garafola?

8 A. I took from that, from Mr. Garafola, on August 1st.

9 Q. Earlier, correct?

10 A. Yes. Yes.

11 Q. And then you went back to Nebraska, right?

12 A. Yes.

13 Q. And then you provided those laptops and cell phones to
14 who?

15 A. To 12 Points.

16 Q. Is that a third-party company?

17 A. Yes.

18 Q. And did they -- did you get an investigation report?

19 A. We didn't get a report. We got a summary of what they
20 found.

21 Q. Was it a written summary?

22 A. I'm not sure if it was written or not.

23 Q. Okay. With respect to the summary that you received,
24 were there other employees that were found to have done
25 something improper according to Sandhills?

—WELCH - CROSS - FARSIU—

1 A. Yes.

2 Q. Okay. How many?

3 A. The one that I recall the most is Garafola Jr. Larry
4 Garafola Jr.

5 Q. Well, what you learned about Larry Garafola Jr. was
6 that -- it looked like there was certain information that was
7 deleted off his computer, right?

8 A. No, that was senior. Garafola Jr., the forensic analysis
9 said that it was completely wiped, meaning the machine went
10 back to what it was at the day it was issued.

11 Q. Okay. And there is no written report on that?

12 A. No, but we could provide one if needed.

13 Q. Okay. Well, if you have a written report obviously we're
14 going to request it, but you don't have that, right?

15 A. Not today, no.

16 Q. So I just want to make sure I'm clear.

17 You're saying that Mr. Garafola's laptop, there was a
18 report from this third-party company that he had deleted
19 files?

20 A. There was just no emails left on there. There was a
21 bunch of things that were put in the deleted folder and
22 ultimately permanently deleted.

23 Q. That's the first I'm hearing of that, but, okay.

24 Now, with respect to this Number 6, on P-4 -- yeah, P-4.
25 You see where it says -- it talks about the solicitation of

—WELCH - CROSS - FARSIU—

1 employees and customers. But do you see where it says "With
2 whom I had personal contact and actually did business with in
3 the course of my employment with the company"?

4 A. Where do you see that? I'm sorry.

5 Q. Number 6.

6 A. Number 6.

7 Q. If you go to the second bullet point, which is what
8 Mr. Miller asked you to read.

9 Do you remember that?

10 A. Second bullet point -- okay. Yes.

11 Q. Number little two.

12 A. I got it.

13 Q. Then it says, when it talks about soliciting -- let me
14 read it. "Solicit, do business with, or accept or aid in the
15 provision of products or services to any customers of the
16 company, its affiliates, and subsidiaries." And then it says
17 "With whom I had personal contact and actually did business
18 with in the course of my employment with the company," right?

19 A. Yes.

20 Q. So this provision is limited to people that Larry --
21 Mr. Garafola actually did business with while he was working
22 for Sandhills, right?

23 A. I'm not an attorney, so I don't know how to read that, I
24 guess.

25 Q. Okay. Now, this document is comprised of the whole

—WELCH - CROSS - FARSI—

1 non-compete for the employment of Mr. Garafola; is that
2 correct?

3 A. Yes, for the employment.

4 Q. Is it your understanding, today, that Facts Technology is
5 doing more than just selling a license -- a software license?

6 A. They're selling online bidding services.

7 Q. Is it different than the question that I asked.

8 Is it -- do you know if they're doing anything other than
9 providing a license software package to someone?

10 A. I don't know. Anything I say would be speculation there.

11 Q. Okay. Would you agree with me that if Mr. Garafola had
12 licensed a software package to an auctioneer company that they
13 could then bring that to Sandhills and say, hey, I want you to
14 run this software and run our auction?

15 A. No.

16 Q. Why not?

17 A. We sell it as a package. We wouldn't use another
18 service.

19 Q. Correct. So, Sandhills would say, no, you have to use
20 our software, and we run the auction, right?

21 A. Yes.

22 Q. Okay. So that would be completely different than what
23 Sandhills does, isn't it?

24 A. I'm not following, I guess.

25 Q. Well, you just said -- you just testified Sandhills

—WELCH - CROSS - FARSIU—

1 wouldn't use someone's software, right?

2 A. We have our own software.

3 Q. Okay. But you'd be capable of doing it if you needed to,
4 right?

5 A. Of doing what?

6 Q. Of using the other software and running the auction for
7 the company?

8 A. I'm not sure I can even speculate on how that would even
9 work but...

10 Q. Well, sir, it's pretty simple. You would -- what you're
11 saying is Sandhills won't run an auction unless that auction
12 is run with their software, right?

13 A. Yeah, that's part of what we're selling.

14 Q. Okay. And so, you're not selling -- you're not selling
15 licensing software to others companies and then having them
16 run their own auction. That's not what you do?

17 A. We do allow people to run their own auction. We're not
18 selling it as a license outright, but we could.

19 Q. But you're not doing that. That's not the business
20 you're in, right?

21 A. We're in the business of online auction services. No
22 different than what Larry is.

23 Q. Sir, you are not in the business of selling a license --
24 a software license; isn't that correct?

25 A. I'm just not seeing the difference.

—WELCH - CROSS - FARSIU—

1 Q. It doesn't matter whether you see the difference or not.
2 Just answer the question.

3 Sandhills is not in the business of selling a software
4 license to a third-party, correct?

5 A. We do sell service licenses.

6 Q. So, which one is it?

7 A. Not with Equipmentfacts, not with BidCaller, but we do
8 sell licenses.

9 Q. Sir, auction services, are you selling a software license
10 to people?

11 A. It's a component of what we're selling. The two can't
12 be... Yeah, it's a component.

13 Q. You were just about to say, the two can't be separated
14 because when Sandhills runs a auction, they run it with their
15 software, right?

16 A. Yes.

17 Q. And part of Sandhills' business does not include selling
18 a software license for auctioneers to run an auction on their
19 own, right?

20 A. Again, it's selling online bidding services. It's --
21 they're the same thing.

22 Q. I just -- you know, it's 4 o'clock now. I know the judge
23 is going to stop here. I just want you to answer the question
24 before we leave here today.

25 A. I did. I don't see the difference.

1 Q. Do you -- it's not whether or not you see the difference.

2 Does Sandhills sell a software license to third-parties
3 and not run their auction?

4 A. No.

5 MR. FARSIUO: Thank you.

6 Judge, do you want to stop here?

7 THE COURT: Yes.

8 Counsel, first let me get a motion by both sides to
9 move into the evidence the documents that you have submitted
10 and marked to the Court so that we can at least receive these
11 as part of the record.

12 MR. MILLER: Judge, on behalf of the plaintiff, I ask
13 that the exhibits that were marked for identification be moved
14 into evidence.

15 THE COURT: Mr. Farsiou.

16 MR. FARSIUO: Judge, I would object to any of the
17 certifications of any third-party being moved into evidence at
18 this time, unless they're going to be presented on the stand
19 and be cross-examined based on what -- Mr. Welch basically
20 testified for what these third-parties are going to say. And
21 I don't think that's fair to Mr. Garafola. I don't think
22 that's fair to the process for us to really find out what was
23 actually said. So that's my objection with respect to those
24 declarations.

25 THE COURT: How about the defense documents?

1 MR. FARSIUO: At this point, Judge, I would ask that
2 the defense documents -- I think it's D-1 through D-4 be moved
3 into evidence.

4 THE COURT: Mr. Miller, any opposition?

5 MR. MILLER: No opposition.

6 THE COURT: The Court will receive these at this time
7 pending the completion of the preliminary injunction hearing.
8 And at that time, we'll make any final determinations as to
9 the receiving of the documents at all.

10 So, with that, that's where we'll leave it with
11 regards to the documents.

12 (Plaintiff's Exhibit P-1 through P-24 for identification.)

13 (Defendant's Exhibit D-1 through D-4 for identification.)

14 THE COURT: Where we'll leave it with regard to the
15 schedule is that we need to wrap this up, gentlemen, as
16 quickly as possible. Apparently, we weren't able to get it
17 done today. I'm only going to allow one more day of testimony
18 here. I can't see letting this go into a third or fourth day.

19 So, with that being said, I've given my courtroom
20 deputy four dates, and it's my hope that one of the four dates
21 will work with you. And I literally had to move my schedule
22 around to make the Court's schedule available on such short
23 notice, but it's important to all that we get this resolved as
24 soon as possible. And I'm sure you all share my concern with
25 that.

1 So, with that, after I leave the bench, Gina will work
2 with you to try and come up with a date that is satisfactory
3 to both sides.

4 Are there any other outstanding issues that we need to
5 resolve at this time?

6 Of course, the current status quo will remain in place
7 until we finish this injunction hearing, that goes without
8 saying. That was part of the initial order.

9 Any other items? From plaintiff counsel?

10 MR. MILLER: Nothing, your Honor.

11 THE COURT: Anything from defense counsel?

12 MR. FARSIYOU: Judge, the only thing I would say --
13 and I know you're saying the status quo, but our position is
14 that the selling of the software license is not keeping -- I
15 mean, I think it's outside of what Mr. Garafola can do.

16 THE COURT: Counsel, that's why we're here. Isn't
17 that kind of the essence of what the ultimate argument is
18 here?

19 MR. FARSIYOU: Well, I think they've alleged other
20 conduct other than the selling of the license.

21 THE COURT: What are you asking the Court to do?

22 MR. FARSIYOU: I would like my client to be able to
23 sell software licenses.

24 THE COURT: That's denied. Anything else?

25 MR. MILLER: Not from the plaintiff.

1 MR. FARSIU: No, Judge.

2 THE COURT: That's all we have for today.

3 MR. FARSIU: Thank you, Judge.

4 THE DEPUTY COURT CLERK: All rise.

5 (Court concludes at 4:02 p.m.)

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7

8 FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE.

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12 I certify that the foregoing is a correct transcript from
13 the record of proceedings in the above-entitled matter.

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20 /s/ CATHY J. FORD, CCR, CRR, RPR

February 14, 2020

21 Court Reporter

Date

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